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**THE DEVELOPMENT OF INTERPARLIAMENTARY PRACTICES:
THE CASE OF THE PARLIAMENTARY CONTROL OF EUROPOL**

**[EL DESARROLLO DE PRÁCTICAS INTERPARLAMENTARIAS:
EL CASO DEL CONTROL PARLAMENTARIO DE EUROPOL]**

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LIST OF ABBREVIATIONS

AFCO	European Parliament Committee on Constitutional Affairs
AFET	European Parliament Committee on Foreign Affairs
AFSJ	Area of Freedom Security and Justice
AGRI	European Parliament Committee on Agriculture and Rural Development
BUDG	European Parliament Committee on Budgets
CONT	European Parliament Committee on Budgetary Control
COSAC	Conférence des Organes Spécialisés dans les Affaires Communautaires
CULT	European Parliament Committee on Culture and Education
DEVE	European Parliament Committee on Development
DROI	European Parliament Committee on Human Rights
EAC	European Affairs Committee
ECON	European Parliament Committee on Economic and Monetary Affairs
EMPL	European Parliament Committee on Employment and Social Affairs
ENVI	European Parliament Committee on Environment, Public Health and Food Safety
EP	European Parliament
EU	European Union
FEMM	European Parliament Committee on Women's Rights and Gender Equality
IMCO	European Parliament Committee on Internal Market and Consumer Protection
INTA	European Parliament Committee on International Trade
IPEX	Interparliamentary EU Information Exchange
ITRE	European Parliament Committee on Industry, Research and Energy
JHA	Justice and Home Affairs
JURI	European Parliament Committee on Legal Affairs
LIBE	European Parliament Committee on Civil Liberties, Justice and Home Affairs
MEP	Member of the European Parliament
MP	Member of the Parliament
PECH	European Parliament Committee on Fisheries
PETI	European Parliament Committee on Petitions
PNR	Passenger Name Records
REGI	European Parliament Committee on Regional Development
SEDE	European Parliament Committee on Security and Defence
TRAN	European Parliament Committee on Transport and Tourism

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ABSTRACT

The increasing role of national parliaments at EU level points in the direction of greater possibilities for the development of interparliamentary practices, particularly for parliamentary control purposes. However, research has paid little attention to the way these interparliamentary practices develop and work in practice. This thesis studies the interparliamentary practices developed in the context of the parliamentary control of Europol, the European Police Agency.

Europol has evolved from its original institutional design as an intergovernmental body established by an international convention into a supranational agency fully integrated into the EU. Against this background, this research looks at the evolution of the parliamentary control of Europol in this process as a case of institutional development within EU representative-democratic institutions and discusses the relationship between integration (as institutional incorporation) and democratisation.

Originally the European Parliament (EP) had almost no scrutiny role regarding Europol. However, in 2010 Europol became an EU agency and the EP acquired, among other things, some degree of control over the budget of Europol. On the other hand, the Lisbon Treaty provides for the political monitoring of Europol to be done by national parliaments and the European Parliament together (TFEU Art.88). Provisions of the Lisbon Treaty has not yet been implemented but changes in the parliamentary practices have already taken place in preparation for the new modality in which both national parliaments and the EP will be involved.

Given this background, the key question is how is the involvement of national parliaments and the EU in the parliamentary control of Europol best balanced? In this regards this thesis provides insights in the relative salience of interparliamentary coordination as compared to a strengthened role for the EP in the process of institutional incorporation of Europol.

INTRODUCCIÓN EN ESPAÑOL

Europol ha ido evolucionando a partir de su diseño institucional original como órgano intergubernamental establecido por un convenio internacional hasta convertirse en un órgano supranacional plenamente integrado en la Unión Europea (UE). Esta tesis analiza la evolución del control parlamentario de Europol en este proceso como un caso de desarrollo institucional dentro de las instituciones de representación democrática de la UE. Por lo tanto, esta tesis analiza la relación entre integración europea (entendida como la incorporación institucional) y la democratización de la Unión Europea.

Fundado en 1999 por el Convenio Europol, una convención internacional, en origen Europol era una institución intergubernamental. El control parlamentario se ejercía de manera indirecta por los parlamentos nacionales a través del escrutinio de los ministros que se sientan en el Consejo de Justicia y Asuntos de Interior. El Parlamento Europeo (PE) no tenía ninguna función de control. Sin embargo, desde entonces, Europol ha experimentado cambios legales significativos. El más significativo en 2010 cuando pasó de ser un órgano supranacional a convertirse en una agencia de la UE. Este cambio permitió al PE, entre otras cosas, un cierto grado de control sobre el presupuesto de Europol. Actualmente, el Tratado de Lisboa prevé que la supervisión política de Europol recaiga tanto en los parlamentos nacionales como en el Parlamento Europeo de manera conjunta (TFUE ART.88). Todavía no se han formalizado las medidas del Tratado pero ya ha habido cambios significativos en las prácticas parlamentarias para ir adaptándose a la nueva modalidad de control en la que participarán los parlamentos nacionales y el Parlamento Europeo.

En este contexto, la pregunta clave es ¿cuál es la mejor manera de equilibrar la participación de los parlamentos nacionales y del Parlamento Europeo? Esta tesis analiza la relativa importancia de la coordinación interparlamentaria, en comparación con el refuerzo del papel del Parlamento Europeo en el proceso de incorporación institucional de Europol. El estudio de la evolución del control parlamentario de Europol nos permite estudiar por qué y cómo se desarrollan las nuevas prácticas interparlamentarias en este área y por qué éstas toman una forma y no otra. Para

entender cuál es el valor añadido de un control interparlamentario y por qué los parlamentos participan en él, esta investigación combina el análisis narrativo, con entrevistas y observación participante. Además se han utilizado indicadores para evaluar el grado de cooperación y control en las diferentes prácticas y evaluar su pertinencia.

Prácticas Interparlamentarias: ¿Qué Papel para los Parlamentos Nacionales en la UE?

Durante mucho tiempo los parlamentos nacionales han sido considerados como los perdedores del proceso de integración europea (Maurer y Wessels, 2001). De acuerdo con esta interpretación, por un lado, la transferencia sucesiva de competencias a la UE ha ido reduciendo la soberanía de los parlamentos nacionales (Auel y Benz, 2005), por otro lado, la naturaleza del proceso político en la UE tiende a favorecer la acción ejecutiva y proporciona a los parlamentos nacionales un acceso limitado al sistema político.

El Tratado de Lisboa ha intentado poner fin a esta situación y ofrece a los parlamentos nacionales un papel real en la arquitectura política de la UE. Por primera vez, el Tratado de Lisboa hace referencia a la contribución de los parlamentos nacionales al ‘buen funcionamiento de la Unión’ (TEU Art.12) y en el caso específico de Justicia y Asuntos de Interior (JAI), el Tratado dice que los parlamentos nacionales participarán en los ‘mecanismos de evaluación de la aplicación’ de las políticas de este sector (TFUE Art. 70); en el ‘control político’ de Europol (TFUE Art. 88) y el ‘control’ de Eurojust (TFUE Art.85). El Tratado de Lisboa también hace referencia específica a la cooperación interparlamentaria entre los parlamentos nacionales y el Parlamento Europeo (TUE Art.12 y el Protocolo del Tratado de Lisboa sobre Cooperación Interparlamentaria). Por lo tanto, el futuro papel de los parlamentos nacionales apunta en la dirección de una mayor participación a nivel de la UE (Neunreither, 1994, 2005; Katz y Wessels, 1999a; Maurer y Wessels, 2001; Besselink, 2006; Bengtson, 2007; Crum y Fossum, 2009).

Tanto la comunidad académica como los profesionales han debatido la forma en que los parlamentos nacionales aprovecharán estas nuevas oportunidades que ofrece el Tratado de Lisboa. En cierto modo, la discusión académica se ha centrado en si y en qué medida

los parlamentos nacionales estarán dispuestos y serán capaces de tener una voz colectiva al nivel de la UE (Kiiver 2006b; O'Brennan y Raunio, 2007; Kaczinsky, 2011). Algunos autores se muestran escépticos ante la posibilidad de que los parlamentos nacionales desarrollen un papel colectivo (Kiiver, 2006b; Kaczinsky, 2011), mientras que otros señalan la posibilidad de una tercera cámara 'virtual' integrada por los parlamentos nacionales (Cooper, 2009).

Varios estudios han analizado los acontecimientos recientes con el fin de arrojar luz sobre las diversas maneras en que los parlamentos nacionales están implementando sus nuevos poderes y qué papel desempeña la cooperación interparlamentaria en este sentido. La mayoría de estos estudios se han interesado en el nuevo papel de los parlamentos nacionales como 'guardianes' del principio de subsidiariedad, tarea que les atribuye el Tratado de Lisboa (Raunio, 2007; Kiiver, 2011; Barrett, 2008; Neuhold, 2011). Para esta nueva tarea el Tratado de Lisboa ha introducido un sistema de votos según el cual un cierto número de parlamentos podría, eventualmente, forzar la retirada de las propuesta legislativas de la Comisión. Los analistas consideran que el desarrollo de la cooperación entre los parlamentos es esencial para que este mecanismo sea efectivo (Raunio, 2010; Matarazzo, 2011). Por esta razón, el estudio de la implementación de este mecanismo es interesante para entender el desarrollo de prácticas interparlamentarias. Sin embargo, este es un mecanismo en el que sólo participan los parlamentos nacionales y por lo tanto no ofrece la oportunidad de estudiar las relaciones entre los parlamentos nacionales y el Parlamento Europeo. Por ello, esta investigación se centra en otra de las tareas que el Tratado de Lisboa también asigna a los parlamentos nacionales: el control político de Europol que según el Tratado de Lisboa se ha de hacer de manera conjunta entre los por los parlamentos nacionales y el Parlamento Europeo (TUE Art.12; TFUE Art.88).

Esta tesis contribuye a la literatura existente sobre los parlamentos nacionales y la UE proporcionando un análisis del reciente desarrollo de prácticas interparlamentarias. La premisa principal de este estudio es que en el nuevo escenario Post-Lisboa, los

parlamentos de la Unión Europea¹ deberán trabajar de manera conjunta para poder hacer uso de sus nuevos poderes. También deberán desarrollar sistemas de escrutinio y control efectivos. El Parlamento Europeo, que tiene un enfoque de tiempo completo en la política europea y una posición más clara en el sistema político de la UE, está en condiciones de actuar como líder de esta cooperación y, al mismo tiempo, modelarla de acuerdo a sus preferencias. Para explorar esta idea me baso en el estudio de la evolución del control parlamentario de Europol.

Las prácticas interparlamentarias han sido calificadas de no ser otra cosa que una oportunidad para ofrecer discursos ya preparados de ante mano donde no se realiza casi ningún escrutinio. Pero en un sistema político como el de la UE el desarrollo de practicas interparlamentarias de control plantea cuestiones acerca de la relación entre los diversos parlamentos de la Unión. En este sentido, la pregunta clave es ¿cómo equilibrar la participación de los parlamentos nacionales y del Parlamento Europeo en el caso del control parlamentario de Europol? La comprensión de estas relaciones puede ser una importante lección para entender el papel de los parlamentos de la Unión Europea después de Lisboa.

Los primeros trabajos sobre la participación de los parlamentos nacionales en la UE abordaban aspectos formales (Burban, 1972; Poehle, 1987; Scoffoni, 1992; Neunreither, 1994; Rideau, 1996). Estas obras son útiles para identificar el desarrollo de prácticas tempranas sin embargo, prestan poca atención a las posibles explicaciones de por qué éstas ocurren. Trabajos posteriores (Westlake, 1995; Costa y Latek, 2001; Neunreither, 2005) comenzaron a interesarse por el papel de los actores involucrados con el fin de proporcionar una explicación. Westlake (1995) sugiere que la participación de los parlamentos nacionales en la Unión Europea y algunas de las prácticas interparlamentarias que surgieron con ella siguió un enfoque pragmático. Según esta interpretación, el PE intentó reforzar su papel en el proceso legislativo, mientras que los parlamentos nacionales trataron de aumentar su control sobre el PE (Westlake, 1995). La hipótesis principal de este trabajo es que se trataba de un proceso racional en el que se buscaba el interés de ambos actores. Esta idea se desprende también de los primeros

¹ En el contexto de esta investigación el termino parlamentos nacionales se refiere a la diferentes cámaras parlamentarias de los diferentes parlamentos nacionales de la UE.

estudios en los que el análisis de las relaciones entre los parlamentos se centra en el equilibrio de poder entre los parlamentos nacionales y el Parlamento Europeo (Neunreither, 1994, 2005; Katz y Wessels, 1999a ; Maurer y Wessels, 2001; Besselink, 2006). Siguiendo a Fitzmaurice (1999), Costa y Latek (2001) adoptan un enfoque más complejo y tratan de identificar las preferencias de los diferentes actores tomando a los diputados y eurodiputados individuales como unidad de análisis. Estudios recientes también se han fijado en la cooperación interparlamentaria como una de las formas en que los parlamentos nacionales pueden participar en la Unión Europea (Auel y Benz, 2005; Benz 2005). Sin embargo, la literatura todavía tiene que explicar cuál sería la razón para que los diversos parlamentos busquen esta opción. Se ha prestado poca atención a este tema, pero en un estudio realizado en 2005 Larhant llega a la conclusión de que los parlamentos nacionales no están interesados en el uso de su participación a nivel de la UE para aumentar sus poderes de control parlamentario (Larhant, 2005). La evolución del control parlamentario de Europol se puede utilizar para profundizar en esta hipótesis.

INTRODUCTION

The Lisbon Treaty contains important reforms to provide greater presence for national parliaments in the political structure of the European Union (EU). This opens greater possibilities for the development of interparliamentary practices. Indeed, the Lisbon Treaty mentions interparliamentary cooperation as one of the activities through which national parliaments ‘contribute to the good functioning of the Union’ (TEU Art.12) and it provides measures for that interparliamentary practices to be implemented. However, there has been little research on how this new role of national parliaments is evolving in practice. In order to better understand this phenomenon this thesis focuses on the interparliamentary practices developed in the context of the parliamentary control of Europol, the European Police Agency. The following paragraphs explain why a close look into the evolution of the parliamentary control of Europol allows us to study why and how interparliamentary practices have been developed as well as why they have taken one form and not other.

Interparliamentary Practices and the Democratic Control of Europol

The parliamentary control of Europol is an excellent case for the study of the development of interparliamentary for three reasons: First, neither the EP nor national parliaments had sufficient means to scrutinize the work of Europol. Established in 1999 by the Europol Convention –an international convention– Europol was an intergovernmental institution. Parliamentary control was provided indirectly by national parliaments via the scrutiny of ministers sitting at the Justice and Home Affairs Council. The European Parliament (EP) did not have any scrutiny role over the agency. This situation allows hypotheses to be explored regarding what role the improvement of the parliamentary control of Europol has played in the evolution of interparliamentary practices of parliamentary control. The democratic control of Europol has been extensively discussed particularly due to the weakness of its parliamentary control and the agency’s increasing functions and powers (Peers, 2006a; Mitsilegas, 2007a). As early as 1999 the EP adopted a Recommendation to the Council (European Parliament, 1999) on the need to reinforce the parliamentary control over Europol. And in 2001 the

Dutch parliament organised an interparliamentary conference to discuss the democratic control of Europol concluding that the scrutiny done by national parliaments was by nature fractionated and indirect and that without any formal agreement for direct scrutiny the EP lacked the competencies to balance the control deficit of national parliaments (Dutch parliament, 2001). Over the years different solutions have been proposed. Interparliamentary practices of control have been suggested at different times and in different ways, be it in the form of more or less informal network or in the form of supervisory committees. In 2001, at the initiative of the Dutch parliament, national parliaments and the European Parliament were encouraged to establish PARLOPOL, a network of national and European Parliamentarians concerned with police and justice affairs (Dutch parliament, 2001:152). Following this initiative, in 2002 the Commission recommended the establishment of ‘a formal mechanism for information exchange and co-ordination between national parliaments and the EP’ in the form of ‘a joint committee, consisting of members of both the member states’ and EP’s committees responsible for police matters’ (European Commission, 2002).

Second, unlike other agencies, Europol has undergone significant legal changes that have affected its parliamentary control, which provides us with the background against which adaptation to those changes can be studied. Europol has evolved from its original institutional design as an intergovernmental body established by an international convention among the member states into a supranational agency fully integrated into the EU allowing the EP, among other things, some degree of control over the budget of Europol. Against this background, this thesis looks at the evolution of the parliamentary control of Europol in this process as a case of institutional development within EU representative-democratic institutions and discusses the relationship between integration (as institutional incorporation) and democratisation.

Third, the Lisbon Treaty provides for the political monitoring of Europol to be done by national parliaments and the European Parliament together (TFEU Art.88). A new regulation should be drafted in order to implement the provisions of the Lisbon Treaty regarding Europol. The form the parliamentary control of Europol will take has not been decided yet. However, changes in the parliamentary practices have already taken

place in preparation for the new modality in which both national parliaments and the EP will be involved.

Interparliamentary Practices: What Role for National Parliaments in the EU?

National parliaments have for long been considered the losers of the European integration process (Maurer and Wessels, 2001). According to this interpretation, on the one hand, successive transfers of competences to the EU level have reduced the sovereignty of national parliaments (Auel and Benz, 2005). On the other hand, the nature of the political process in the EU tends to favour executive action and provides limited access to the political system for national parliaments. The Lisbon Treaty² aimed to put an end to this situation and to offer a real possibility for a new role for national parliaments in the political architecture of the EU. For the first time, the Lisbon Treaty makes reference to the contribution of national parliaments to the ‘good functioning of the Union’ (TEU Art.12). In the more specific case of Justice and Home Affairs (JHA), national parliaments will be involved in the ‘evaluation mechanisms for the implementation’ of that policies (TFEU Art.70) and in the ‘political monitoring of Europol’ (TFEU Art.88) and the ‘control’ of Eurojust (TFEU Art.85). The Lisbon Treaty also makes specific reference to the interparliamentary cooperation among national parliaments and with the European Parliament (TEU Art.12 and the Lisbon Treaty Protocol on Interparliamentary Cooperation). Hence, the future role of national parliaments points in the direction of greater involvement at EU level (Neunreither, 1994, 2005; Katz and Wessels, 1999a; Maurer and Wessels, 2001; Besselink, 2006; Bengtson, 2007; Crum and Fossum, 2009).

Both the academic community and practitioners alike have debated the way in which national parliaments will take advantage of the new opportunities provided by the Lisbon Treaty. To a certain extent, the academic discussion has been centred on whether

² The amendments introduced by the Lisbon Treaty as of 1 December 2009 were consolidated in two separate treaties: the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), together with the annexes and Protocols thereto. For simplicity this thesis refers to amendments of the Lisbon Treaty and provides reference to the articles in the consolidated versions of the Treaties.

and to what extent national parliaments will be willing and able to have a collective voice at EU level (Kiiver 2006b; O'Brennan and Raunio, 2007; Kaczinsky, 2011). Some authors remain sceptical of the possibility that a collective role could be developed (Kiiver, 2006b; Kaczinsky, 2011) while others signal the possibility of a 'virtual' third chamber made up of national parliaments (Cooper, 2009). Several studies have analysed recent developments in order to shed light on the various ways national parliaments are implementing their new powers and what role interparliamentary cooperation plays in these developments. These studies were mostly interested in the developments associated with the new role as 'subsidiarity watchdogs' that the Lisbon Treaty assigns to national parliaments (Raunio, 2007; Kiiver, 2011; Barrett, 2008; Neuhold, 2011). For this new task the Lisbon Treaty introduced a system of votes according to which a certain number of parliaments could eventually force the withdrawal of a legislative proposal. Analysts consider that the development of cooperation between parliaments is essential for this mechanism to have any effect (Raunio, 2010; Matarazzo, 2011). For this reason, the implementation of this mechanism is interesting in order to understand the development of interparliamentary practices. However, this is a mechanism in which only national parliaments take part and therefore it does not provide the opportunity to study relations between national parliaments and the EP. Hence, this study focuses on another task that the Lisbon Treaty also assigned to national parliaments: the 'political monitoring of Europol', which, according to the Lisbon Treaty, is to be done by national parliaments 'together' with the European Parliament (TEU Art.12; TFEU Art.88).

This thesis contributes to the existing literature on national parliaments and the EU by providing a better understanding of recent developments regarding interparliamentary practices. My core line of reasoning is that in the new Post-Lisbon institutional setting national parliaments will need to cooperate if they are to make full use of their new powers. They will also need to develop effective sifting and scrutiny systems. The EP, having a full-time focus on European politics and a clearer position in the EU's political system, is in a position to act as a leader of this cooperation and at the same time shape it according to its preferences. In order to explore this line of reasoning I draw on evidence of parliamentary control of Europol.

Interparliamentary practices have been criticised for being opportunities to deliver nicely pre-prepared speeches where hardly any scrutiny is achieved. But the key question is how the involvement of national parliaments and the EP is best balanced? For a political system such as the EU, parliamentary control raises questions regarding the relationship among the parliaments of the EU. Understanding these relationships can be a major lesson for understanding the role of parliaments in a post-Lisbon European Union³.

Early works on the involvement of national parliaments in the EU dealt with the formal aspects (Burban, 1972; Poehle, 1987; Scoffoni, 1992; Neunreither, 1994; Rideau, 1996). These works are useful identifying the development of early practices. However, they pay little attention to possible explanations for why they happen. Later works (Westlake, 1995; Costa and Latek, 2001; Neunreither, 2005) started to pay interest to the role of actors involved in order to provide some explanation. Westlake (1995) suggests that the involvement of national parliaments in the EU and some of the interparliamentary practices that emerged with it followed a pragmatic approach. According to this interpretation, the EP sought to enhance its role in the legislative process, while the national parliaments sought to enhance their scrutiny over the EP (Westlake, 1995). The main assumption behind this work is that this was a rational and process in the best interest of both actors. This idea follows from early studies in which the analysis of the relations between parliaments focuses on the power balance between national parliaments and the EP (Neunreither, 1994, 2005; Katz and Wessels, 1999a; Maurer and Wessels, 2001; Besselink, 2006). Following Fitzmaurice (1999), Costa and Latek (2001) take a more complex approach. They try to identify the preferences of different actors taking individual MPs and MEPs as the unit of analysis. Another explanation is to see parliamentary cooperation as one of the ways in which the national parliaments can take part in the EU (Auel and Benz, 2005; Benz 2005). However, the literature still needs to explain what would be the reason for parliaments to push for that option. Little attention has been paid to this issue but in a study done in 2005 Larhant reaches the conclusion that national parliaments are not interested in using their

³ In the context of this research the term national parliaments refers to the different chambers of the several national parliaments of the EU.

involvement at EU level to increase their parliamentary control powers (Larhant, 2005). The evolution of the parliamentary control of Europol can be used to explore this hypothesis further.

Hypotheses

Two different explanations can account for the evolution of the interparliamentary practices of parliamentary control. The first explanation derives from neoclassical institutionalism. This theory believes that the purpose of institutions is to address problems and that institutions result in increased efficiency (Gilpin, 2001:39). Based on neoclassical institutionalism this thesis proposes the following hypothesis:

H1: Interparliamentary practices of parliamentary control have flourished due to the impossibility that either level of parliament could on its own provide adequate parliamentary control.

In order to produce effective scrutiny, national parliaments need considerable information and resources and also a legal framework that allows for them to take part in scrutiny. In the particular case of Europol, under the Europol Convention parliaments had little of that. Both national parliaments and the EP found it difficult to provide effective parliamentary control over this agency, as neither national parliaments nor the EP possessed sufficient legal means to scrutinise directly the activities of Europol.

According to the Europol Convention, parliamentary control was provided by national parliaments via the scrutiny of ministers sitting in the Justice and Home Affairs (JHA) Council. However, the control of the Council over Europol was only indirect. Europol's Management Board provided annual reports to the Justice and Home Affairs Council on Europol's activities but the Council did not supervise Europol's activities directly. Additionally, the ability of national parliaments to control ministers or to hold ministers to account for their actions on the Council regarding Europol was rather limited. In the first place the secrecy of the Council meetings reduced the access to information. Also, in many cases the constitutional provisions for national parliaments to exercise control over their own ministers are rather limited (Kiiver, 2006a). This is not the case for all parliaments. For example, in the Netherlands the Minister is bound by the opinion of the

Dutch parliament before coming into the position to agree officially as a member of the JHA Council. The Government cannot agree to any JHA decision intended to bind the Netherlands until both Houses of the Parliament have given their assent. Special committees in both houses prepare the assent that needs to be confirmed by their respective plenary. However, in general national parliaments have not developed such formal mechanisms of control. Or they might lack the time and expertise to scrutinise complex issues at EU level. A recent survey conducted among all national parliaments of the EU on the way national parliaments exercise control over Europol concluded that in most national parliaments there is 'no systematic scrutiny' (COSAC, 2009a). As for the EP, the Europol Convention gave the EP a limited role: consultation in case of any changes in the Europol Convention and the right to receive an annual report on Europol's activities forwarded by the EU Presidency (Europol Convention, Art.34). This situation forced the EP to scrutinise the activities of Europol informally through hearings and round-tables.

The creation of interparliamentary practices for parliamentary control could have been a way to address these limits. They provide national parliaments with a way to obtain the information and expertise required. For instance, the EP could provide information regarding the issue at stake and other national parliaments could provide and share evaluations of particular policies. The scrutiny done by the EP is significantly different from the scrutiny provided by national parliaments because of the position of the EP inside the EU political system, opposed to the outside position of national parliaments, and because of the EP's full-time focus on EU politics.

A second explanation for the evolution of the interparliamentary practices of parliamentary control comes from public choice theory. This theory argues that powerful groups – public officials and politicians – create institutions only if they promote their own self-interest (Gilpin, 2001:39). According to this theory interparliamentary institutions of parliamentary control have been developed to satisfy the interest of powerful groups involved in the design thereof. This approach gives the possibility of identifying the role of powerful actors such as the Committee of the EP in charge of Justice and Home Affairs (the LIBE Committee) in influencing the form that

parliamentary control of in the field of Justice and Home Affairs will take. This thesis proposes the following two hypotheses based in this public choice approach:

H2: The development of interparliamentary institutions for the parliamentary control of Europol has promoted the interests of both the EP and the national parliaments.

H3: Powerful actors such as the EP's Committee on Civil Liberties (LIBE) and its secretariat have managed to influence the form interparliamentary practices of parliamentary control in this field have taken.

The EP may want to see itself as 'the parliament of the EU' but it cannot avoid the fact that the involvement of national parliaments in the EU has been at the top of the EU's institutional reform agenda. Calls for an enhanced role for national parliaments were prominent in the constitutional debate that took place during the Convention on the Future of Europe, which preceded the drafting of the Lisbon Treaty. Established by the European Council in December 2001 with the purpose of producing a draft constitution for the EU, the European Convention discussed, *inter alia*, the future role of national parliaments in the EU and the need to increase the Union's legitimacy. The debate was greatly influenced by the idea that the closer inclusion of national parliaments in the EU could solve part of the democratic deficit by bringing the EU closer to citizens. As a result, the most important decisions of the Convention regarding national parliaments had the intention of increasing the role of the national parliaments in the EU. It is in this context, according to the public choice perspective, that the role of the EP in shaping interparliamentary practices needs to be understood.

Faced with a situation in which the role of national parliaments at EU level is increasing, to the point of being recognised in the Lisbon Treaty, the EP will be interested on a solution that would not jeopardize its in the EU's political system. On the other hand, national parliaments, or more concretely MPs, might not find a clear reward for the time they may need to spend on scrutinising EU policies. The development of interparliamentary institutions for parliamentary control where both national parliaments and the EP are present provides national parliaments with the possibility of

being involved at EU level without needing to increase much the time and resources devoted; at the same time it offers the EP the possibility of shaping the form in which the involvement of national parliaments at EU level takes place. *H3* intends to explore the role of the EP in influencing the design of interparliamentary practices.

Thesis Structure

Chapter 1 discusses the democratic deficit of the EU and explores the role of interparliamentary practices in addressing it. The democratic deficit of the EU has been intensively discussed in the literature. While it has been argued by some that the legitimacy of the EU rests not so much on its democratic characteristics but rather on its capacity to deliver for citizens (e.g. Majone, 1996), this thesis takes the approach that even if it is correct, still it would be difficult to make the case for an undemocratic EU. Democracy is a useful safeguard against the abuse of power in order to ensure that citizens' rights are protected and that choices affecting their lives are not merely arbitrary. This chapter discusses the difficulties of providing the necessary parliamentary control in the EU and presents how interparliamentary practices can address some of these difficulties. This discussion is based on the idea that the very same structure of the EU is a source of democratic deficit, because it allows shifting the locus of decision-making to where it is least likely to be open to supervision by elected representatives (Lord, 2001:654). As part of this discussion, this chapter addresses the theoretical reasons for parliaments to take part interparliamentary practices and the hurdles these practices will eventually face ahead, such as traditional suspicion between parliaments and the scarce interest raised by the scrutiny of EU affairs raises in national parliaments. Finally, the chapter proposes a change of paradigm regarding the role of parliaments in the EU so that scrutiny of EU affairs done by different parliaments is understood as additive and complementary rather than mutually exclusive.

Following the arguments presented in Chapter 1, Chapter 2 looks at the evolution of the parliamentary control of Europol as a case of institutional development within EU representative-democratic institutions. Europol has evolved from its original institutional design as an intergovernmental body established by an international

convention among the member states into a supranational agency fully integrated into the EU. Against this background, this chapter pays attention to the balance between the increased parliamentary control by the EP and the different forms of interparliamentary coordination suggested at different points in time.

Chapter 3 presents the methodology used for assessing the hypotheses as to how positions taken in debates about interparliamentary practices and outcomes in terms of actual parliamentary control can be explained. This research combines narrative process tracing, analyses of evidence on particular interparliamentary practices, interviews and participant observation. Indicators are also used in order to assess the different interparliamentary practices developed for the parliamentary control of Europol. This has been combined with evidence obtained from reports and parliamentary debates as well as from interviews and participant observation. Narrative process tracing is used to explore the evolution of the parliamentary control of Europol. Particular interest is paid to changes in Europol's legal framework as it is during these periods when interparliamentary solutions for the parliamentary control of the agency have been suggested. Regarding the analysis of interparliamentary practices this research pays special attention to the information shared via IPEX, the EU Information Exchange, and interparliamentary fora such as COSAC, and the Joint Committee and Parliamentary Meetings organised between the EP and national parliaments. Attention is also paid to the work of representatives of national parliaments in Brussels who together with MEPs and MPs and parliamentary officials working on issues related to Europol have been interviewed.

Based on process tracing of the main changes regarding the legal basis of Europol Chapter 4 provides an analysis as to how the evolution of the parliamentary control of Europol can be explained. This is important in order to understand how the idea of interparliamentary control practices was introduced, what have been the necessary developments for its implementation and what have been the different preferences of the actor involved.

Chapter 5 looks in detail at the evidence from specific interparliamentary practices and assesses them. Based on evidence from interviews with participants working on the parliamentary scrutiny of Europol, Chapter 5 addresses what participants see the added value of interparliamentary practices as being, why some forms are preferred to others specially for the future interparliamentary control of Europol and what role actors had in influencing the final shape of interparliamentary practices in this field. To conclude this chapter discusses the way forward for the parliamentary control of Europol, considering that the three different modes of interparliamentary practices need not exclude each other and that the real challenge for the regulation that will implement the Lisbon Treaty's requirement that 'the political monitoring of Europol to be done by national parliaments and the European Parliament together' (TFEU Art.88) is how the different modes can best be connected and calibrated.

CHAPTER 1

THE ROLE INTERPARLIAMENTARY PRACTICES ADDRESSING THE DEMOCRATIC DEFICIT OF THE EU

Introduction

Recent institutional changes and the increasing number of policy areas regulated at EU level have triggered an extensive debate on the legitimacy of the EU and its alleged democratic deficit. While some authors have presented the situation as critical (Scharpf, 1999; Kohler-Koch, 2003; Føllesdal and Hix 2005; Schmidt, 2005; Kohler-Koch and Rittberger, 2007) others have defended the democratic deficit of the EU whether on the basis that sufficient checks and balances are in place (Moravcsik, 2002) or because the public prefers the deficit to all plausible solutions to it (Majone, 1998). Majone argues that it has been voters' preferences that have chosen to keep national sovereignty largely intact while continuing an incipient economic integration process at the expense of depoliticising the European policy-making process. Thus, for Majone, the democratic deficit is 'democratically justified' (Majone, 1998). It may well be true but the weakness of parliamentary control in the EU cannot be denied. Some authors, indeed, identify the very structure of the EU as part of its legitimacy problem (Scharpf 1999; Lord, 2001; Kohler-Koch, 2003; Føllesdal and Hix, 2005; Kohler-Koch and Rittberger 2007). Lord (2001) argues that the incomplete division between legislative and executive powers and the division of the Union into pillars allows executive bodies in the Union to shift the locus of decision-making to where they are least likely to be open to supervision by elected representatives (Lord, 2001:654).

This chapter discusses the difficulties of providing the necessary parliamentary control in the EU based on the idea that the very same structure of the EU is a source of democratic deficit. As such, this chapter explores the role of interparliamentary practices in addressing the gaps for adequate parliamentary control in the EU. As part of

this discussion, this chapter addresses the theoretical reasons for parliaments to take part in interparliamentary practices and the hurdles these practices will eventually face ahead, such as traditional suspicion between parliaments and the scarce interest raised by the scrutiny of EU affairs raises in national parliaments. Finally, the chapter proposes a change of paradigm regarding the role of parliaments in the EU so that scrutiny of EU affairs done by different parliaments is understood as additive and complementary rather than mutually exclusive.

The EU's Democratic Deficit: Can National Parliaments Address It?

It has been argued that the legitimacy of the EU has to be found in its capacity to satisfy preferences – that is, in its efficiency rather than in its democratic characteristics. Majone (1996) characterizes the EU as a Pareto-efficient system and suggests that we should analyze the democratic legitimacy of the EU in terms of its efficiency. The main assumption behind Majone's analysis is that the issues that are dealt with at EU level are essentially efficiency issues rather than redistributive issues. According to Majone, redistributive policies and institutions can be legitimated only through direct political accountability, while efficiency-oriented policies and institutions are basically legitimated by the results they achieve. Efficiency may be thought of as a positive-sum game where everybody can win. Hence, issues of efficiency could be settled by unanimity in non-majoritarian institutions (Majone, 1996). The problem with this argument is that the EU is a redistributive system to a much greater degree than Majone allows. The EU possesses enormous redistributive powers (Wessels and Katz, 1999:5), which entail a political allocation of values (Easton, 1965) that may be detrimental to the interests of at least some parts of society.

It would be possible, however, to believe that the EU is by and large a Pareto-improving polity that makes few allocations and still fail to make the case for an undemocratic EU, for democracy is a useful safeguard against the abuse of power in order to ensure that citizens' rights are protected and that choices affecting their lives are not merely arbitrary.⁴ Democratic control answers the question of how a system of institutions that

⁴ I am grateful to Christopher Lord for this idea.

might infringe upon citizens' rights is to be controlled and held accountable. Thus, citizens' rights are likely to be better protected where there is democratic control than where there is not. Moreover, some of the EU's policies may infringe upon the fundamental rights of its citizens. Let's think for instance at the implications in terms of right to privacy that the sharing of personal information for the purpose of police cooperation in Europe may have.

Parliaments are not the only institutions that could provide democratic control, other institutions such as courts and ombudsmen could provide democratic control. But parliaments are the only democratic institutions entitled to make politically (and not merely judicially) binding decisions. For these reason those who trade political values against each other should be able to explain to the public their choices in parliament. Parliaments, as representative institutions, are able to enhance the principle of political equality in making or scrutinizing political decisions (Peters, Wagner and Deitelhoff, 2008:6).

According to classical democratic theory 'the process of European integration has challenged the sovereignty and the legitimising mechanisms of the nation-state without compensating with comparable democratic mechanisms at European level' (Katz and Wessels, 1999a:3). In the same vein, intergovernmental theories understand democratic deficit as a form of 'agency loss' (Pollack, 1997a) where the Union institutions engineer outcomes that go beyond the understanding on which national democracies consented to integration. According to these theories, the European integration process had transferred powers from national level to European level, gradually leaving national parliaments outside the EU political system and leading to the possibility for national parliaments to be bypassed in key policy areas. This view assumes that the democratic deficit would disappear if national sovereignty could be defended against the further expansion of European competencies (Scharpf, 1997:19).

There are different views regarding the extent to which the deficit at EU level could/should be solved. According to Moravcsik questioning the legitimacy of the EU due to the lack of power of the EP is misleading for 'the EU is not a system of

parliamentary sovereignty, but one of separation of powers' (Moravcsik, 2002:610). For Moravcsik, this division of powers guarantees a check and balance system that generates pluralistic policies since concurrent majorities are required for action. Other authors argue that such compensation at EU level is complicated due to the absence from the European arena of those shared meanings and deliberative practices needed to legitimate and facilitate democracy (Eriksen and Fossum, 2000:8). Scholars in the communitarian approach argue that the absence of '*a single demos*' precludes the possibility of *input* legitimacy at the European level (Habermas, 1989; Weiler et al. 1995; Scharpf, 1999). According to these theories if the EP's powers were extended, there would still be serious doubts regarding the extent to which the democratic deficit of the EU would be ameliorated (Scharpf, 1997). The argument is that parliamentarisation as a solution for legitimacy finds the objection that ultimately representative government without public opinion lacks its basis and substance (Abromeit, 1998:33). These theories point out that European elections are a sort of second-order elections (Reif and Schmitt, 1980; Peterson and Shackleton, 2002:113) fought exclusively on national grounds and with low turnout. This is on the one hand because of the lack of European political parties and leaders but also because of the lack of a European political public which European leaders could address. And on the other hand because the EP cannot hold accountable a hypothetical European government, which diminishes the possibilities for the EP to establish competition for government offices and in turn reduces in terms of citizens' preferences the significance of EP election results and depoliticises the contest. The last European elections resulted in a far from encouraging scenario. There was a decreasing turnout, down from 62% of citizens voting in 1979 to 45% in 2007 and 43.39% in 2009. Spain, at 45.81%, remained within the average, but countries such as Romania (27%), Slovakia (19%) and Poland (24%) recorded particularly low levels of turnout. Even countries with a traditionally high turnout, such as Italy, saw a decrease in the number of voters from 71.2% in 2004 to 65% in 2009.⁵ Moreover, the EP is directly elected but its influence on European legislation and its capacity to control the Council is limited.

⁵ Data are gathered from the official website of the European Parliament [www.europarl.europa.eu].

This situation suggests that it might be better to find alternative sources to enhance (input) legitimacy at the European level. One proposed solution is to include national parliaments in the EU's political system. Debates during the European Convention – the body established in 2001 by the European Council with the purpose of producing a draft constitution for the EU, the basis of what later became the Lisbon Treaty – were greatly influenced by the idea that the closer inclusion of national parliaments in the EU could solve part of the democratic deficit. As a result, most important decisions of the Convention regarding national parliaments had the intention of increasing the role of the national parliaments in the EU (Mitsilegas, 2007a). The first rationale behind the idea of increasing the role that national parliaments play at EU level is that national parliaments are closer to citizens and their involvement in the EU could therefore bring 'Europe closer to citizens'. The second rationale for the inclusion of national parliaments in EU business has to do with the nature of the Union itself. The integration process in Europe is being developed amongst states that were already well-defined polities. As Crum (2005) puts it, the European Union was not created *ex nihilo*. The implications of this for representative democracy in the EU cannot be ignored and involving those polities or "pre-existing national democracies" in the EU is not a matter of willing but a necessity (Crum, 2005: 456).

In the European tradition parliaments are the central institutions for representation and political legitimacy (Wessels and Katz, 1999:10). According to Scharpf (1997; 1999), democratic legitimacy refers to both the inputs and the outputs of a political system. On the input side, democratic legitimacy requires mechanisms to link political decisions with citizens' preferences. On the output side, Scharpf argues that democracy would be an 'empty ritual' if the democratic procedure was not able to produce effective outcomes 'achieving the goals that citizens collectively care about' (Scharpf, 1997:19). In Scharpf's words (1997; 1999), the democratic deficit of the EU is characterized by the fact that national institutions are unable to meet all the *output* conditions for democratic rule while Union bodies are unable to meet all the *input* ones.

The inclusion of national parliaments at EU level could address *input* legitimacy providing a link to citizens. However, this needs to be carefully considered. The

inclusion of more veto players in the EU, in this case national parliaments, could endanger the collaboration framework established through a delicate intergovernmental equilibrium. I will come back to this idea later but the reader can imagine the consequences of increasing the number of veto players in an already cumbersome decision-making system like the EU. Aside from the possibility of thereby reducing the EU's democratic deficit, the inclusion of national parliaments in EU affairs would affect the very nature of the Union itself. The Danish model is often mentioned when talking about the inclusion of national parliaments in the EU. The Danish Folketing possesses a mandate whereby it dictates the position the government can adopt when negotiating at the Council. However, in practice, the method does not lack problems. Very tight mandates can reduce the bargaining capacity of a given government and sometimes make agreements impossible. Moreover, if the so-called Danish model were to be adopted in every country or even in a majority of them, the Council's ability to reach agreements would certainly be reduced. This would diminish the EU's capacity to deliver results for its citizens.

When thinking about the consequences of the inclusion of national parliaments in the EU political system, not only considerations regarding the increase in the number of veto players need to be taken into account but also national parliaments' own innate limitations. National parliaments do not have a full-time focus on 'EU business' and they are effectively outside the EU's political system (at least until the entry into force of the Lisbon Treaty). For that reason, unless well functioning interparliamentary networks are established, national parliaments are not 'the most obvious fora' (Lord, 2004:181) either for deliberation at the level of the EU's political system or for taking decisions on behalf of the polity as a whole. As Edmund Burke famously stated in his speech to the electors of Bristol, it would make no sense for those who have no possibility of taking part in the deliberation to make the decisions (Burke, 1774[1856]:446-8). Also, relying mainly on national parliaments for Union representation, excluding the EP would produce political inequality and a situation in which citizens would be represented differently depending on where they are, due to national parliaments' different powers and capabilities (Lord, 2004:181). Unlike national parliaments, the EP represents all citizens of the EU regardless of where they

live. Moreover, the EP operates at the level of the EU political system and it is in a position to take part in a deliberation process that takes into account the views of all the members of the EU. On the contrary, the nature of the political process in the EU tends to favour executives and it provides national parliaments with limited access to it. The European integration process has also eroded the position of national parliaments within the national institutional framework (Norton, 1996) diminishing their ability to exercise control over their own governments (Kiiver, 2006a). Powers that previously required parliamentary approval in the domestic arena can now be exercised by executive discretion at Union level (Dimitrakopoulos, 2001:406). As for the European Parliament, its influence on European legislation and its capacity to control the Council is limited (Scharpf 1999; Kohler-Koch, 2003; Føllesdal and Hix, 2005; Kohler-Koch and Rittberger 2007). There are also limits to how far the Council can be made accountable through the relationships of its individual members to the national parliaments. While a national parliament can control its own government it cannot do much when its government is outvoted in the Council. One way to address these limitations is that national parliaments could concentrate themselves on matters decided by unanimity and the EP on those decided by majority. Another solution could be that the EP should scrutinise the Council as a collective European decision-making institution while national parliaments should concentrate on holding their governments to account for their individual contributions (Lord and Harris, 2006). The following paragraphs explore further these ideas and explore the rationale for the development of interparliamentary practices of parliamentary control.

Why Developing Interparliamentary Control Practices?

In the first place the rationale of interparliamentary control is found in the limited capacities of parliaments. As mentioned the influence of the EP over the Council is rather limited as it is that of national parliaments effectively outside the EU system. Effectively national parliaments can achieve control only of their own government and even this involves resources and time – time not devoted to national politics. National parliaments could see their potential to control each national government increased due to information received from other parliaments and from the EP. The role of national parliaments would be to influence ministers at the level of the Council *ex-ante*. This

would require, on the one hand, sufficient and timely information regarding the issues at stake as well as knowledge about the EU decision-making timetable (Kiiver, 2006a) and, on the other hand, a coordinated role for national parliaments. The role of the EP would be to fill the information and expertise gaps, extracting information from the EU institutions and evaluating Union policy (Lord, 1998:58). Effective channels of communication between national parliaments and the European Parliament would thus be essential (Lord, 1998:59). National parliaments would be able to use their superior ability to engage public attention and control (single) governments at the level of the Council (Scharpf, 1997:31), while the EP would provide control over the Council as a whole, providing some checks and balances in everyday policy-making. The EP would also be able to provide information and analysis on European affairs due to its permanent focus on the European arena and its higher (compared to national parliaments) competence in monitoring a highly complex political system. National parliaments, instead, would bring the European Union 'closer to its citizens'.

However the development of interparliamentary practices is not an easy task. First of all, parliaments regard each other as a threat. An increased role for national parliaments may provoke EP resistance since it could be used as an excuse to question the need for a stronger EP (Lord, 1998:59). At the same time, national parliaments have interpreted every increase in the powers of the EP as a downgrading of the national parliaments' role (Norton, 1996). Even cooperation between national parliaments is treated with suspicion.

National parliaments, or more concretely MPs, do not always find a clear reward for the time they might spend on scrutinizing EU policies. In order to produce effective scrutiny, national parliaments need considerable amounts of information and resources. Scholars who have addressed the participation of national parliaments at EU level have warned against the risk of presupposing that national parliaments are interested in censuring and over-controlling their own governments. As Auel and Benz (2005) put it, the role of national parliamentary majorities is to support the government of the day and therefore it is unrealistic to expect from these same majorities another role at EU level. However, when dealing with EU issues national parliaments do not abdicate from their

control but rather delegate it on the government (Saalfeld, 2000; 2005). This means that there is still an element of accountability and there are no reasons to believe that national parliaments may not be interested in increasing their capabilities in this direction, particularly if this is at no additional cost.

The inclusion of national parliaments at EU level via the development of interparliamentary practices could take different forms but there are three that deserve further consideration. First, national parliaments could choose not to develop any interparliamentary mechanism. Second, they could choose to create new interparliamentary structures in which they could include or not include the European Parliament. And third, they could choose a loose form of parliamentary coordination vis-à-vis the EP in already established interparliamentary fora or even informally. The first option has the advantage that it does not require parliaments to invest resources in an issue that clearly does not directly require them to be involved at. However, national politics are increasingly unable to address current policy issues and it is understandable that the pressure on parliaments to be involved at the EU level in scrutinising policy would grow. The disadvantage of the second option against the third option is that it requires political will to reform EU institutions and it is difficult to argue for a further complication of the EU's institutional design. Also considering the little rewards that MPs gain from time spent in EU scrutiny they may prefer a loose form of involvement. I will come back to this but for the moment we will have a look at the reasons the European Parliament may have to pursue a development of interparliamentary practices.

From an institutional point of view, the EP lacks the control powers typical of a parliament in a democratic system. Cooperation with national parliaments could be a way to redress this deficit. Another reason for the willingness of the EP to develop interparliamentary practices could be that it sees it as the best solution for enhancing the role of national parliaments at EU level without jeopardising the position of the EP in the EU's political system. The EP may want to see itself as 'the parliament of the EU' but it cannot avoid the fact that the involvement of national parliaments in the EU has been at the top of the EU's institutional reform agenda, and it has now become a reality since the entry into force of the Lisbon Treaty. From the point of view of the EP a

greater inclusion of national parliaments in the EU via the development of interparliamentary practices in existing fora that can be influenced by the EP may be more desirable than the establishment of new structures that could challenge its position. The creation of new structures at EU level, in which national representatives would take part, could be a potential challenge for the position of the EP. Moreover, new structures would make the EU's political system more cumbersome. This could affect the capacity of the system to produce effective outcomes. The EP's legitimacy would suffer more from a reduction of the EU's capacity to satisfy citizens' preferences than that of national parliaments. This is not only because the EP is embodied into the EU's political system but also because, unlike the EP, national parliaments could always blame it on 'Brussels'. This double game strategy is not available for the EP. For this reason the EP may have an interest in accommodating national parliaments at EU level without creating new interparliamentary structures for representation.

To better understand the logic behind the development of interparliamentary practices of control we may consider a paradigm shift on how to address the role of parliaments in the EU. In his analysis, Besselink signals that academic literature has based the analysis of the relationship between parliaments on what he calls a level approach. This approach regards national parliaments and the EP as mutually exclusive (Wessels, 1996). From this argument it follows that 'the legitimising and accountability function of national parliaments is sufficiently exhausted wherever the European Parliament has a formal decisive role'. As a result, issues classified as 'European' risk to be immediately excluded from national scrutiny (Besselink, 2006:129). A different paradigm, based on a 'polycentric approach', would consider the scrutiny of different parliaments as complementary rather than exclusive. As Crum puts it, executive power in the European Union is dispersed; shared between member states and a plethora of more or less autonomous European and national bodies making the distinction between the national and the European obfuscated (Crum, 2005). This means that scrutiny should also be dispersed and the role of EU parliaments should be understood as additive and complementary rather than as mutually exclusive. Crum and Fossum (2009) have developed the notion of 'multilevel interparliamentary field'. Crum and Fossum have developed the notion of the multilevel interparliamentary field to capture

the interplay of different parliamentary institutions on and across different levels in the European Union. The advantage of this notion is that it does not focus exclusively on separate channels of parliamentary control but directs research towards the totality of relevant parliamentary actors and also includes their interaction across different levels (Peters, Wagner and Deitelhoff, 2008:8). Drawing from Bourdieu's concept of field, the multilevel parliamentary field captures better than the concept of network the nature of the relationship between parliaments in the EU because it permits the inclusion of a distinctive role for the EP (Crum and Fossum, 2009). The concept also allows us to look at both formal and informal interparliamentary interaction along both horizontal (amongst national parliaments) and vertical (EP-national parliaments) lines. As the concept of field in Bourdieu's theory, the notion of the interparliamentary field provides for understanding of why actors behave in such a way and what logic and field dynamics direct their behaviour. This is an interesting question. But it must be answered with care, for, as the parliamentary literature notes, parliaments are not unitary actors (Kiiver, 2006a) and different actors within parliaments have different motivations.

Conclusion to Chapter 1

This chapter has discussed the democratic deficit of the EU and it has explored the role of interparliamentary practices in addressing it. The main argument put forward to defend this idea is that the structure of the EU allows the locus of decision-making to be shifted to where it is least likely to be open to supervision by elected representatives (Lord, 2001:654), and only the joint action of the different parliaments could address this gap. Executive power in the EU is dispersed (Crum, 2005). Hence, only if scrutiny is also dispersed it can be effective. This requires a change of paradigm that would understand the role of EU parliaments – national parliaments and the European Parliament – as additive and complementary rather than as mutually exclusive.

The main rationale for the development of interparliamentary control practices is the limited capabilities of parliaments and its effects on the legitimacy of EU decision-making. Interparliamentary practices of parliamentary control can address fundamental gaps in the ability of parliaments to provide parliamentary control. In line with *HI* the development of interparliamentary practices of parliamentary control could have its

origins on the inability of parliaments to provide effective parliamentary control. However, parliamentary cooperation is also a way to constrain national parliaments' behaviour at EU level. In this context, *H2* questions the extent to which interparliamentary practices could be developed unless this promotes the interests of parliaments and *H3* explores the role of the EP in shaping these practices.

In order to explore these hypotheses, chapter 2 begins by analysing the evolution of the parliamentary control of Europol as a case of institutional development within EU representative-democratic institutions paying attention to the balance between the increased parliamentary control by the EP and the development of different forms of interparliamentary control practices.

CHAPTER 2

THE EVOLUTION OF THE PARLIAMENTARY CONTROL OF EUROPOL AS A CASE OF INSTITUTIONAL DEVELOPMENT WITHIN EU REPRESENTATIVE-DEMOCRATIC INSTITUTIONS

‘In every democratic society it is considered necessary to ensure proper accountability of the police and other law enforcement agencies to the legislature and judiciary. This should be no less true of European-level policing’ (Peers, 2000:189).

Introduction

Europol, the European Police Agency, has evolved from its original institutional design as an intergovernmental body established by an international convention into a supranational agency fully integrated into the EU. This chapter, discusses this process. In particular this chapter focuses on the evolution of the parliamentary control of Europol as a case of institutional development within EU representative-democratic institutions and it discusses the relationship between integration (as institutional incorporation) and democratisation.

Three different stages can be identified in Europol’s development. The first of these was an embryonic phase, during which European police cooperation took place at an *ad hoc* fashion. The European Community’s supranational institutions such as the European Parliament, the European Commission and the European Court of Justice were not involved during this phase at all. The second stage involved the formal creation of Europol. Based on the then new provisions given by the Treaty of Maastricht for cooperation in the field of Justice and Home Affairs, the member states signed the

Europol Convention⁶ providing Europol with a legal framework. At that time, police cooperation was still largely dominated by intergovernmental decision-making, in which the EP had very limited powers. For this reason, and because of the intergovernmental origins of the police cooperation structures that preceded Europol, the role of the EP in the parliamentary supervision of Europol was limited. However, amendments to the Europol Convention allowed for a series of incremental increases in Europol's powers and competences.⁷ In next phase, Europol became an EU agency financed from the Community budget and not from the contributions of the member states, as had been the case under the Europol Convention. Finally, a new phase is currently been developed. The legal basis of Europol, the Council Decision on Europol⁸, will be modified in order to give effect to the legal provisions of the Lisbon Treaty regarding Europol's structure, operation, field of action, tasks and parliamentary control (TFEU Art.88). Particularly interesting for the subject matter of this research is that one of these provisions mentions specifically that the 'political monitoring of Europol' will be carried out by national parliaments 'together' with national parliaments (TFEU Art.88). Proposals for these changes will not be ready until 2013 (European Commission, 2010) but national parliaments and the EP are already discussing the issue. The following sections analyse these phases in turn.

Europol's Origins: Ad Hoc Intergovernmental Cooperation

The origins of police cooperation in Europe can be traced back to what was called the Trevi Group, a multilevel intergovernmental forum consisting of Justice and Home Affairs ministers, bureaucrats and police officers created in 1975 as a response for the need for effective police cooperation within Europe (Den Boer and Walker, 1993). Following its creation at the European Council in Rome in 1975 the Trevi Group meet

⁶ Convention based on Article K.3 of the Treaty on the European Union, on the Establishment of a European Police Office (Europol Convention), adopted on 26 July 1995.

⁷ The Protocols entered into force in 2007. Protocol 1. The Protocol drawn up on the basis of Article 43(1) of the Europol Convention amending Article 2 and the Annex to that Convention — (the 'Money Laundering Protocol'), OJ C 358, 13.12.2000, p. 2. Protocol 2. The Protocol amending the Europol Convention and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol — (the 'JIT Protocol'), OJ C 312, 16.12.2002, p. 2. Protocol 3. The Protocol drawn up on the basis of Article 43(1) of the Europol Convention amending that Convention — (the 'Danish Protocol'), OJ C 002, 06.01.2004 p. 3.

⁸ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (OJ L 121/37, 15.05.2009)

for the first time in June 1976 in Luxemburg (Guyomarch, 1997:130-131). The name of the group seems to be taken from the famous fountain in Rome where the group met for the first time as well as a pun on the last name of its first chairman A.R. Fonteijn. Later TREVI became a backronym of the French words *terrorisme, radicalisme, extrémisme et violence internationale* (Occhipinti, 2003:31).

To illustrate the intergovernmental nature of the early days of police cooperation in Europe one can point out that although TREVI included all of the then European Community members, it operated outside the Community framework. Additionally, TREVI was a highly intergovernmental organisation, with the Community's supranational institutions like the Court, the Parliament and the Commission playing no role in it (Occhipinti, 2003:31). Apart of its intergovernmental nature, police cooperation before the early 1990s was characterized by being mainly *ad hoc* without any fixed structure. However, due to perceived internal security needs, derived in part from the collapse of the Soviet Union and the fall of the Berlin wall, countries like Germany pressed for more structured and deeper police cooperation within the European Union.

By the early 1990s, mafia organisations and international crime organisations found a safe haven in central and Eastern European Countries (EECs). Having an extensive border with EECs and being confronted with problems such as drug, arms and human trafficking from Eastern Europe, Germany felt that greater cooperation on internal security was needed. Hence, in 1991, at the Luxemburg European Council, Germany proposed the creation of a European office for criminal investigation. The German proposal did not encounter the approval of other member states afraid of the supranational nature of some of its measures (Occhipinti, 2003).

The German proposal envisaged the creation of a European office of criminal investigation in two phases. A first phase would entail exchange of information and a second phase would involve providing the office with independent investigative powers (Fijnaut, 1995). This proposal did not meet the acceptance of other member states, which considered the establishment of the office on the terms described in the German

proposal a supranational interference. Particularly problematic was the idea of granting executive powers to a supranational body, which some countries opposed. Thus, the only possible agreement was to go forward with just the first phase (Hebenton and Thomas, 1995:85). This meant that the future European Police Office would be created without executive powers and with the prior objective of serving for information pooling and analysis only.

In 1991 an Ad Hoc Working Group on Europol was created within TREVI to begin planning the development of Europol under the new Treaty of Maastricht. This group was composed of about fifty permanent members and was permanently chaired by a senior British police official (Occhipinti, 2003:35). Based on a compromise reached during the negotiation of the Treaty of Maastricht, by which member states agreed to provide themselves with 'a Union-wide system for exchanging information within a European Police Office', the TREVI working group on Europol suggested the formation of a European Drugs Unit (EDU) as a point for the exchange of criminal intelligence among police forces (Kostakopoulou, 2006:237). This unit would serve as an 'embryonic Europol' (Occhipinti, 2003:34). By June 1993 the TREVI ministerial group agreed the creation of the EDU, which started working in January 1994 with the initial responsibilities of collecting and analysing information on drug trafficking, related money laundering, and the criminal organizations involved in these. Progressively, other areas of criminality were added to the work of the unit, transforming the initial focus on fighting drug-dealing and related offences into a more general scope of combating 'serious forms of international crimes' (Occhipinti, 2003:40).

In June 1992, the European Council meeting in Lisbon decided that the transformation of the EDU into Europol needed an international convention. The TREVI Working Group on Europol and its successor under the Treaty of Maastricht – the so-called Europol Working Group of the K.4 Committee – started the drafting process (Occhipinti, 2003:57). After lengthy negotiations, member states signed the Europol Convention in July 1995. Following ratification by the national parliaments of all 15 EU member states, the Convention entered into force on 1 October 1998. And on 1 July 1999, four years after the Convention was signed, Europol became fully operational.

The Europol Convention: Bringing Cooperation into the Community

Compared to the completely intergovernmental character of police cooperation in its origins, the Treaty of Maastricht managed to bring police cooperation into the Community and defined a role, albeit limited, for the Commission by including it as an observer in the Council working groups. Regarding the EP, the Treaty of Maastricht granted the EP the formal right to be informed by the Council on JHA activities, including the activities of Europol. This power was extended when the Treaty of Amsterdam obliged the Council to consult the EP before taking any measures in the area of JHA. This effectively gave the EP the power to delay JHA decisions since the Council has to wait for the EP's opinion before taking decisions. However, the legal framework for Europol, the Europol Convention, still suffered from a weak democratic control.

During the drafting of the Convention the member states were not able to reach agreement concerning either the immunities of Europol staff or the extent to which Europol's actions were to be subject to revision by the European Court of Justice (ECJ). The United Kingdom opposed allowing the ECJ to resolve disputes that citizens or states might have regarding whether Europol was operating according to the terms of the Europol Convention (Guyomarch, 1997:126-7). Countries like the Netherlands and Belgium, by contrast, considered the involvement of the ECJ a prerequisite for the ratification of the convention by their respective national parliaments. The approach taken was to deal with these issues in two Protocols that were attached to the Convention. A Protocol to the Convention, concerning the jurisdiction of the Court of Justice to receive references from national courts concerning the Europol Convention, was signed in 1996 and entered into force in 1998. The Protocol allowed each country to decide the extent to which the actions of Europol would be subject to the review of the ECJ.

The gestation of Europol took place during the process of institutionalization of Justice and Home Affairs cooperation (the so-called third pillar) that took place with the 1992 Treaty of Maastricht. The Treaty of Maastricht essentially institutionalized the already existing intergovernmental structures and practices with the logical consequence that

police cooperation structures mirrored the original intergovernmental structures under which the TREVI Group started its work. The TREVI Group operated at three levels. At the top-level ministers of interior met every six months, chaired by the president of the Council. It was at this level that formal decisions were made and more controversial issues were discussed. Senior officials of the ministries, which composed the second level of the structure, prepared these meetings. The day-to-day work was prepared in ad-hoc working groups supervised by senior officials acting as a bridge between the specialised working groups and the Council. The working group in charge of Europol was one of these specialised working groups. Consequently, supranational institutions had no role (Santiago, 2000).

The Treaty of Maastricht brought this structure into the EU as part of the newly created JHA pillar (Occhipinti, 2003:38). As before, ministers of Justice and Home Affairs, now in the form of the JHA Council, held the top-level meetings. Preparation for these meetings was done by national civil servants in the Committee of Permanent Representatives (COREPER) who supervised the work of the different working groups, formed by ministerial civil servants in charge of the day-to-day work. In the case of police and judicial cooperation, Article K.4 of Title VI of the Treaty of Maastricht established a coordinating committee, composed of senior officials from justice and interior ministries as well as an observer from the Commission, to prepare the work of the Justice and Home Affairs Council in this policy area.⁹ This working group, which replaced the Working Group on Europol, became known as the Article K.4 Committee. After the entry into force of the Treaty of Amsterdam it changed its name to the Article 36 Committee, as it is still known today.

According to the Europol Convention, the Europol Director runs the agency's daily operations assisted by two deputy-directors. The Director was accountable to a management board composed by one representative from each member state and chaired by the state holding the EU presidency. The Council officially appointed the Europol Director for a period of four years renewable once and could dismiss him/her after consulting the Management Board. Hence, under the Europol Convention,

⁹ For the organization chart see Kostakopoulou (2006), p.239.

accountability problems were solved by the fact that member states set the agency's funding, appointed its senior staff, and defined its priorities through the Management Board. But this control only amounted to an indirect control over Europol, since Europol's Management Board provided annual reports to the Justice and Home Affairs Council on Europol's activities but the Council did not supervise Europol's activities directly.

Article 34 of the Europol Convention provided for Europol to report to the European Parliament. However, the effect of this measure was rather limited. The Europol Convention provides for the Presidency to present an annual report on Europol's activities to the European Parliament (Europol Convention, Art.34(2)), but this report was not exactly the same as the annual report that Europol presented to the Council. In this way the European Parliament had only a passive right to information because the degree of involvement of the European Parliament depended on the transparency-mindedness of the EU Presidency in charge. The situation was slightly improved in 2003 when a Council Act of 27 November 2003 (Europol Convention Art.28((10)) provided for the EP to gain access to the same report as the Council. Under the Europol Convention, the EP had the right to address the Europol Director or Coordinator when seeking explanation. However, he/she was not obliged to appear before the Parliament. Hence, every time the Europol Director appeared for hearings before the EP's LIBE Committee he/she was doing so on his/her own will.

With this legal framework it is not surprising that when in June 2001 the Dutch parliament invited parliamentarians from national parliaments and the EP to discuss the parliamentary supervision of Europol, the conclusion of the discussion was that the scrutiny of Europol done by national parliaments was rather non-existent and that the EP lacked the competencies to balance the control deficit of national parliaments (Dutch parliament, 2001; Fijnaut, 2002:18). This had the consequence that European police cooperation (including cooperation involving Europol) could largely go on without parliamentary control (Wagner, 2004).

As an international convention, the Europol Convention could be modified only following ratification by each national parliament. This was, at least in theory, a source of democratic control. But at the same time, an international convention was an inefficient legal framework for an organization that needed to be adapted rapidly in order to respond to trends in crime. The ratification of each Protocol by national parliaments meant that amendments of the Europol Convention required a long process. For this reason, it was decided that Europol needed a new framework that had to be easier to amend. The idea of establishing a legal framework for Europol that can easily be updated was not a trivial matter if one considers that it took an average of more than five years to ratify the Protocols to the Europol Convention adopted in 2000, 2002 and 2003. A political agreement to replace the Europol convention by a Council decision was reached in the Council on December 2006 after fifteen months of intense discussion.

In a way the Europol Convention served as a legal straightjacket obstructing Europol's development. Nevertheless, this did not keep the Council from progressively extending Europol's remit by expanding the types of crime that it was competent to handle (Occhipinti, 2003:58-9,70,137). Expansions of the crime areas, just as with the Europol Drugs Unit, came with high profile events or incidents and often member state politicians decided without even getting the opinions of law enforcement officers in the field (Peers, 2000). Over the years Europol was thus made responsible for combating such crimes as counterfeiting the Euro, terrorism, and money laundering. In 2002, Europol's mandate was extended to all forms of international organized crime. As regards its capabilities, in contrast to the Europol Drugs Unit, Europol cannot merely collect and analyze information, it can also archive and manage information in its own databases: the so-called Europol Computer System.

The Council Decision on Europol: Europol, an EU Body?

In a meeting in Luxembourg on 6 April 2009 the Council of the European Union Justice and Home Affairs adopted a decision transforming Europol into a EU body from 1

January 2010. The Council Decision of 6 April 2009¹⁰ replaced the Europol Convention and its three amending Protocols. According to the Commission, the aim of the Council Decision was, in the first place, to provide Europol with a legal framework that could be more easily amended than an international convention. Secondly, the Council Decision aimed at replacing the intergovernmental funding of Europol by funding from the budget of the Union (European Commission, 2008a). This conferred upon Europol the status of an EU agency and made it somehow independent from the member states. At the same time the European Parliament acquired a significant role in adopting the budget of the organization, including the discharge of the financial accounts.

By incorporating Europol within the EU legal framework, the EP in its capacity as a branch of the budgetary authority can have a direct impact on the activities of the new agency (Council Decision on Europol Art.42(1)). In the same vein the EP is also responsible for the control of Europol's budget (Council Decision on Europol Art.43(6-9-10)). Taking into account a recommendation from the Council, the EP gives a discharge to the Director regarding the budget implementation. Europol is also obliged to submit to the EP, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question.

With the Decision on Europol the European Parliament also sees enhanced its right to receive information and ask for information regarding Europol. According to Art.37(10) the Council should forward the following documents to the EP for its information on an annual basis: the draft estimate of revenue and expenditure, the draft establishment plan and the final budget; the work programme for Europol's future activities and the general report on Europol's activities during the previous year. More importantly, Art.48 of the Decision provides for regular and formal exchanges between the EP and Europol and gives the EP the right to request that the Presidency of the Council, the Chairperson of the Management Board or the Director appear before the EP to discuss matters relating to Europol at any time. Unlike in the past there is now an obligation to follow the EP's request.

¹⁰ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (OJ L 121/37, 15.05.2009)

Nonetheless, the Council Decision did not change much the ability of national parliaments to exercise control over Europol. National parliaments' supervision of Europol's activities is exercised through their control over their respective governments, in accordance with the constitutional rules of each member state. As with the Europol Convention, the Europol's Management Board has the responsibility for guiding and supervising Europol. This Board, which is composed of representatives of member states, reports to the Council. The Council members concerned with Europol matters, i.e. the Interior or Justice Ministers, are subject to national parliamentary controls. Each of these ministers is responsible for providing adequate information on the functioning of Europol to his/her national parliament, where he/she can be held accountable for the Ministry's policy regarding Europol.

The Council Decision extended the mandate of Europol to criminality not strictly related to organized crime (Council Decision on Europol Art.3). And Europol's functions were also enhanced from the supportive role of 'crime analysis, information exchange and coordination' to a more executive one which includes 'participation in a support capacity in joint investigation teams (Council Decision on Europol Art.6). Europol also acquired the power to establish new information systems (Council Decision on Europol Art.11).

The increase in Europol's attributions follows an already established pattern. Although Europol was created with limited tasks and with the competence to apply those powers only to limited forms of crime, Europol's powers and the type of crimes in its remit were extended soon after its creation. According to the Europol Convention, which established Europol under international law, the mission of Europol was to make a significant contribution to the European Union's law enforcement activities against organized crime and terrorism with an emphasis on targeting criminal organizations. Art.2 of the Convention stated that Europol's objective was 'to improve the effectiveness and cooperation of member states in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime' (Europol Convention Art.2). This was extended to terrorism and currency counterfeiting in 1999, and soon after to all of the crimes listed in an Annex to the Europol Convention (Peers,

2006a:2). As for Europol's powers, its initial tasks concerned the gathering, exchange and analysis of information and intelligence on criminal cases (Europol Convention Art.3). Successive Protocols amending the Europol Convention enhanced Europol's capabilities allowing for Europol to take part in joint investigation teams and to request individual member states to institute criminal investigations (Second Protocol) as well as to conclude agreements with third countries and eventually to transfer data to them (Third Protocol). These agreements may open the door for data relating to EU citizens to be shared with other partners whose privacy standards may not be at EU levels. This may have an impact on the right of citizens to the protection of their personal data.

The evolution of Europol reveals a shift from an initial focus on specific crimes towards organized crime in general and from an initial role in handling information towards operative powers, showing a tendency towards a more executive Europol (Bargeman, 2006:6). At the same time, Europol is increasingly moving towards establishing itself as an autonomous EU agency financed from the EU budget. In this context the possibility of exploring new formulas for the improvement of parliamentary control is understandable. Powers such as the right to participate in joint investigative teams opens the question of whether and to what extent traditional parliamentary control is enough. The Lisbon Treaty seems to suggest that a collaborative approach between national parliaments and the EP may be the way forward in securing accountability and democratic control over agencies like Europol. The Lisbon Treaty already provides for this possibility when it mentions that the 'political monitoring' of Europol is to be undertaken by national parliaments together with the EP (TFEU Art.88). However, this is still pending legislative development, as the regulations that will put these measures to effect have not yet been drafted and the fact that the EU Treaty prescribes that the EP together with national parliaments will take part in parliamentary control of Europol gives a clear push for interparliamentary cooperation in this field to be developed in future.

Conclusion to Chapter 2

This chapter has looked at Europol, the European Police Agency, as an example of institutionalized cooperation outside parliamentary control. Against the argument that agencies like Europol have very restricted powers, this chapter argues that the evolution of Europol reveals a shift from an initial focus on specific crimes towards organised crime in general and from an initial role in handling information towards executive action and that the handling of personal data by Europol could potentially infringe the fundamental rights of EU citizens. At the same time, Europol parliamentary control has evolved. Originally, Europol's parliamentary control was rather weak due to the intergovernmental origins and culture prevailing in this policy field. Europol was regulated by an intergovernmental convention and it had an intergovernmental structure that made parliamentary control difficult. National parliaments lacked access points to the Council and overall information was scarce. As for the European Parliament it did not have any formal means to establish parliamentary control. Moreover, the Europol Convention was modified by several Protocols and Europol's remit and powers were increased. This situation was only changed by the inclusion of Europol into the EU as a full-fledged agency, which, among other things, gave the EP powers as a budgetary authority over the agency.

Police cooperation is part of the so-called Justice and Home Affairs policy area. The main political objective of this policy area in recent years has been the establishment of the Area of Freedom, Security and Justice (AFSJ). This has promoted among others, new measures aimed at (1) limiting abuses of the asylum system; (2) manage the transfer of personal data in the context of police cooperation and external border controls; and (3) make sure the national parliaments follow rules for the interception of telecommunications in the fight against organized crime. Measures like these ones, and in general all JHA provisions, raise important questions about the protection of fundamental rights demanding a level of rights protection. Contrary to the general trend that presents security policies as purely technical issues, JHA policies require a distribution of political values. Because the consequences of these choices may influence differently different parts of the political community, representative institutions should be entitled to scrutinize those choices. In the case of executive

agencies, such as Europol, the principal-agent relationship between parliaments and agencies provides a framework by which parliaments delegate certain tasks to agencies under their supervision. This implies that parliaments have the right to hold those agencies to account. In other words, parliaments delegate to executive agencies some particular policy areas but they retain the power to hold these agencies accountable.

It could be argued that agencies like Europol have very restricted powers and that this diminishes the need for their parliamentary control. Ultimately, Europol cannot initiate investigations and Europol officers have no direct powers of arrest. In this sense, Europol does not possess executive powers in the same way as US federal law enforcement agencies do (Kostakopoulou, 2006:237). However, Europol experts and analysts take part in Joint Investigation Teams and the handling of personal data by Europol could potentially infringe the fundamental rights of citizens. Even before Europol officers participated in multinational investigations, Europol's processing of some 150,000 pieces of personal data directly touched upon individual rights, raising issues of parliamentary control over Europol activities (Wagner, 2007:86). Moreover, Europol's superior access to intelligence compared to the access granted to national police forces makes it likely to have considerable influence on the course of investigations, especially now that Europol enjoys the right to request member states to start or abstain from investigations. This is important because of Europol's cooperation with Eurojust, the coordinating body of member states' authorities dealing with criminal investigations. It is also envisaged that Europol will cooperate with Frontex, the specialized body which task is to coordinate cooperation among member states in the field of border security. Europol's right to request investigations will be relevant if Frontex, as it seems, becomes responsible for the coordination of activities in the field of custom controls.

The perceived lack of parliamentary control has been addressed several times. The European Parliament has called on several occasions for the establishment of democratic and parliamentary control of Europol. In 1999 the EP formulated proposals for enhancing parliamentary control over Europol in a recommendation regarding the extension of Europol's powers (European Parliament, 1999). On 14 November 2000 the

EP passed several resolutions (European Parliament, 2000a) in which it expressed its desire for greater democratic control over Europol and a more supranational approach to crime fighting, and asserted the importance of protecting civil rights in the emerging Area of Freedom, Security and Justice (AFSJ). The EP also expressed its concern over democratic control of Europol in two resolutions dealing with the extension of Europol's remit (European Parliament, 2001b) and the future establishment of Europol as a Community Agency (European Parliament, 2000a). The European Commission has also dealt with this issue in its communication on the exercise of democratic control over Europol (European Commission, 2002) of 26 February 2002. The following suggestions have been put forward in these documents: (1) to provide for adequate parliamentary control in the event of Europol being given operational powers; (2) to provide for the creation of a European public prosecutor in the event of Europol being given cross-border operational powers; (3) to make the Europol Director accountable to the competent Parliamentary committee. Following the Council Decision on Europol, discussed in the previous section, the EP has obtained many of its demands. Europol is not under the authority of a commissioner responsible to the EP. Nevertheless, the Council provides the EP with considerable possibilities to supervise the agency, such as budgetary control and the right to question the Europol Director.

Another suggestion for the improvement of parliamentary control over Europol has been the establishment of interparliamentary bodies to oversee Europol activities. The first so called 'interparliamentary' conference on Europol was organised at the Dutch Senate (*Eerste Kamer*) and House of Representatives (*Tweede Kamer*) in June 2001. It was at that meeting that Justice and Home Affairs Commissioner Antonio Vitorino called for greater democratic control over Europol. In particular, he suggested the creation of a joint committee comprising members of both national parliaments and the European Parliament to supervise Europol. This committee would meet twice a year (Occhipinti, 2003:138). In the same conference a Dutch initiative suggested the creation of PARLOPOL, a network of national and European Parliamentarians concerned with police and justice affairs (Dutch parliament, 2001:152). The creation of a joint supervisory committee was again discussed in December 2006, when the Council agreed that a Council Decision should replace the Europol Convention. The proposal,

although discussed at early stage of the negotiations, never made it into the Council Decision. However, the idea of establishing a body for the joint supervision of Europol by the European Parliament and national parliaments was never forgotten and its eventual development is totally in line with current legal provisions. The Lisbon Treaty makes specific reference to the interparliamentary cooperation among national parliaments and with the European Parliament (TEU Art.12 and the Lisbon Treaty Protocol on Interparliamentary Cooperation) and it provides for the involvement of national parliaments together with the European Parliament in the ‘political monitoring of Europol’ (TFEU Art.88).

The logic of parliamentary cooperation arises from the impossibility that either national parliaments or the EP alone could provide effective parliamentary control over Europol. Already in 2002 Fijnaut noted that the scrutiny of Europol done by national parliaments was by nature fractionated and indirect and that without any formal agreement for direct scrutiny the EP lacked the competencies to balance the control deficit of national parliaments (Fijnaut, 2002:18). Despite the tendency of the Council to increase Europol’s powers and the scope of its activities a paper presented to the Council in 2006 described a situation similar to that one in 2002. According to a Council paper presented during the discussions prior to the drafting of the current Council Decision on Europol in 2006, the EP was only informed of Europol’s actions and most national parliaments did not play any direct role in the work of Europol (Council of the European Union, 2006a). Thus, under the Europol Convention, national parliaments found it difficult to organize individually an adequate parliamentary supervision of Europol. Although Europol’s Management Board provided annual reports to the Justice and Home Affairs Council on Europol’s activities, the Council did not supervise Europol’s activities directly. Hence scrutiny of Europol done by national parliaments was only indirect and fractionated by nature as single parliaments could only hold their own ministers to account. As for the European Parliament, its initial supervisory rights were limited to being informed of the activities of Europol (Europol Convention Art.34). Without any formal agreement for direct scrutiny, the EP lacked the competencies to balance the control deficit of national parliaments.

The EP was consulted neither in the negotiation and drafting of the Europol Convention (European Parliament, 1994), nor when the Council act of November 2002 drew up a Protocol amending the Europol Convention. The LIBE Committee approved in May 2002 a report rejecting the Protocol on joint investigative teams (European Parliament, 2002a). Despite the EP's views, the Council approved the Protocol on the 28 November 2002. This Protocol, which entered into force on 3 April 2007, gave Europol the competence to participate in joint investigation teams in the member states, and to ask member states' law enforcement authorities to begin investigations. Equally, agreements were concluded with the United States of America for the exchange of information and intelligence as well as to allow the exchange of personal data, without referring to national parliaments or to the EP.

It can be argued that democratic control over Europol was sufficiently exhausted by the fact that Europol was responsible before the Council. It is true that the Europol Director reported to the Council and that he appeared before various working groups of the Council. However, there was no mechanism in the Council to provide for any follow-ups on the information provided. Hence the Council passed a judgment on the Europol Director without having any discussion with him. This together with the fact that the Council's agenda is essentially agreed upon in the lower structures of the Council such as working groups and permanent representatives (Hayes-Renshaw and Wallace, 1997:78) calls into question the efficacy from a democratic perspective of the role that the Council performs in providing accountability.

The Council Decision on Europol replaced the Europol Convention giving the EP substantial supervisory powers, especially regarding the budget of the agency. Due to these improvements, it could be argued that parliamentary cooperation has lost its purpose and that parliamentary control should be left to the EP. However, there are still significant gaps in the control that the EP alone could provide. For instance, the Council Decision on Europol can be amended by further decisions agreed upon unanimously by the Council instead of having to draw up Protocols. Moreover, the Decision provides for qualified majority voting in the Council and two-thirds majority voting in the management board when approving or implementing measures such as those regarding

external relations and exchanges of personal data (Council Decision on Europol Art.31(4) and Art.37(8)). Formally, it would be the role of national parliaments to provide some sort of parliamentary control over the Council for these cases. However, the Lisbon Treaty provides for the development of procedures for the parliamentary control of Europol to be done by the national parliaments and the EP. The development of such procedures is still being discussed but certainly the inclusion of these provisions in the Treaty is a sign of the importance paid to interparliamentary practices in this field. The next chapter presents the methods used in this research in order to assess the development of such practices in this area.

CHAPTER 3

METHODS

Introduction

This chapter presents the methods used for assessing the hypotheses as to how positions taken in debates about interparliamentary practices and outcomes in terms of actual parliamentary control can be explained. These include narrative process tracing, analysis of evidence on particular interparliamentary practices, interviews and participant observation.

Interparliamentary Cooperation: A Definition

The guidelines for interparliamentary cooperation in the European Union drafted by the Conference of the Speakers of the European Union Parliaments in June 2008 (Conference of Speakers, 2008) mention that the main objectives of interparliamentary cooperation in the EU are:

1. To promote the exchange of information and best practice between the national parliaments of the EU with a view to reinforcing parliamentary control, influence and scrutiny at all levels.
2. To ensure effective exercise of parliamentary competences in EU matters in particular in the area of monitoring the principles of subsidiarity and proportionality.
3. To promote cooperation with parliaments from third countries.

Given that this study focuses only on the parliaments of the EU the last objective is outside the scope of our research. Regarding the other two objectives the key question is to measure how these activities have served the parliamentary control of Europol.

Taking the guidelines for interparliamentary cooperation as a model this study has defined what would eventually amount to interparliamentary cooperation in the case of Europol's parliamentary control.

1. Exchange of information and best practice:

- a) Exchange of information and best practice among national parliaments and between national parliaments and the European Parliament regarding procedures for parliamentary scrutiny of Europol.
- b) Exchange of information among national parliaments and between national parliaments and the European Parliament regarding Europol's activities.
- c) Exchange of information among national parliaments and between national parliaments and the European Parliament regarding legislative proposals affecting Europol's activities and remit.

2. Coordination of scrutiny procedures:

- a) Coordinated scrutiny procedures between national parliaments and the EP for the purpose of scrutinizing Europol's activities and the proposals affecting its remit.

As this definition refers to legislative proposals affecting Europol's activities and remit I have identified those legislative acts and proposals that have been most significant in this regard. I then focussed the research primarily upon these acts.

The Europol Convention established Europol as the European Police Office:

- 26/07/1995 Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)

Three Protocols to the Europol Convention modified the original convention in various ways but for this research it is important to notice that they extended Europol's remit and functions without increasing parliamentary control, although that options was suggested during the negotiations:

- 27/11/2003 Council Act of 27 November 2003 drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), a Protocol amending that Convention.

- 28/12/2002 Council Act of 28 November 2002 drawing up a Protocol amending the Convention on the establishment of a European Police Office (Europol Convention) and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol.
- 30/11/2000 Council Act of 30 November 2000 drawing up on the basis of Article 43(1) of the Convention on the establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention.

Besides the Protocols to the Convention several Council Decisions extended Europol's mandate:

- 29/04/1999 Council Decision of 29 April 1999 extending Europol's mandate to deal with forgery of money and means of payment
- 6/12/2001 Council Decision of 6 December 2001 extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention
- 12/07/2005 Council Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting, by designating Europol as the Central Office for combating euro counterfeiting

And finally the Europol Convention was modified altogether and a Council Decision replaced it in 2009 changing among other things the parliamentary control powers of the EP over the agency as well as the status of Europol that from now onwards was an agency of the EU:

- 06/04/2009 Council Decision of 6 April 2009 establishing the European Police Office

Surveying the Different Types of Interparliamentary Practices

Following the definition of parliamentary cooperation provided in the preceding section parliamentary cooperation involves two main actions: the sharing of information and the coordination of scrutiny procedures. The following paragraphs provide a survey of the different interparliamentary initiatives currently taking place in the EU. The aim of this survey is to serve as guide for where we could start looking for cooperation particularly in the case of the scrutiny of Europol.

At the institutional level, annual meetings between the presidents of national parliaments have been taking place since 1981 in order to deal with matters concerning

practical administrative cooperation between parliaments (Jacobs, Corbett and Shackleton, 2000:79). Currently these meetings are known as the Conference of Speakers of the European Union Parliaments. This conference is made up of the Speakers of the national parliaments of the EU member states and the President of the European Parliament. However, the Secretaries-General or other designated officials convene regularly in order to prepare the agenda and the debates of the Conference of Speakers. The scrutiny of Europol could not take place in these meetings as this is not a forum of scrutiny but a ‘forum for the exchange of opinions, information and experiences related to the role of parliaments’. The objective of the Conference of Speakers is to ‘oversee the coordination of interparliamentary EU activities’ (Conference of Speakers, 2010). However, these meetings could discuss and share experiences regarding the parliamentary control of Europol.¹¹

The scrutiny of Europol is more likely to happen at committee level, either at Committees of Justice and Home Affairs or at European Affairs Committees. Reforms also provide for COSAC to ‘organise interparliamentary conferences on specific topics’ (TEU Art.12 Protocol No.1 on the role of national parliaments) which opens the door for specific interparliamentary cooperation between sectoral committees of Justice and Home Affairs to cooperate through COSAC. For these reasons this research will pay attention at the cooperation established through COSAC. COSAC, brings together representatives from national parliaments and the EP. Since its creation in May 1989, its biannual meetings have provided the most structured interparliamentary fora in the EU. It currently has a permanent Secretariat and produces biannual reports on issues of interest to national parliaments. COSAC was officially recognised in a Protocol attached to the Treaty of Amsterdam. Since its creation there have been supporters and opponents of the institutionalization of COSAC and the strengthening of its role (Kiiver, 2006a). Thus, the Protocol that recognised COSAC was the outcome of a compromise between those who wanted a collective role for national parliaments and those who preferred a more individual involvement and therefore a not very formalized and institutionalized COSAC. The Protocol did not confer on COSAC (at least not

¹¹ Access to the agenda of all Conference of Speakers is available at <http://www.ipex.eu/ipex/cms/home/pid/24444.jsessionid=995494C79525418AC7D6CD04BA8EA907>

specifically) any scrutiny powers. Nevertheless, the recognition of COSAC in the Treaties, even if it was in a Protocol, was a major step.

In its early years the effectiveness of COSAC was questioned (Maurer and Wessels, 2001) but the potential importance of COSAC as forum that could serve as a tool for parliamentary scrutiny has grown since its origins. In 2003, COSAC changed its rules of procedure. This change allowed for COSAC to adopt contributions voted under majority rule, giving COSAC the possibility of articulating views and formulating opinions. COSAC's potential regarding the scrutiny of Europol has also increased. The Lisbon Treaty provides for COSAC to address to the Union institutions contributions on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the Area of Freedom, Security and Justice (AFSJ), and questions regarding fundamental rights (TEU Art.69).

Apart from COSAC meetings between national parliaments and the EP in the context of regular parliamentary cooperation have also discussed the parliamentary control of Europol. Originally meetings between the EP and National parliaments took two different formats: Joint Committee Meetings and Joint Parliamentary Meetings. However, a new form of meeting is emerging, the so-called Interparliamentary Committee meetings with national parliaments. Both the Joint Committee Meeting and Interparliamentary Committee meetings with national parliaments are meetings between sectoral committees of the EP and committees of the national parliaments. The difference between these two types of meetings is that Joint Committee Meetings are organised by the EP and the parliament of the country holding the EU presidency whereas Interparliamentary Committee Meetings are proposed on the initiative of the individual parliamentary committees of the EP, which invite national colleagues from their corresponding committees. These meetings are a continuation of existing practice and mainly cover the policy areas where the EU has legislative powers using the co-decision procedure. This difference is mainly procedural but makes the process of organising meetings easier compared to the one required for joint meetings (personal interview with Mr. Josep María Ribot, EP Administrator, October 2010).

Political parties and party families also play an important role in contacts between parliamentarians. At the national level, political parties provide a channel for interaction between MPs and MEPs. Links between MEPs and their own national political parties are probably amongst the strongest (Jacobs, Corbett and Shackleton, 2000:278). Most individual MEPs belong to national political parties, which play an important role in their selection. Political families also have their own meetings before interparliamentary fora such as COSAC or parliamentary or committee meetings. These meetings allow both MEPs and MPs from different nationalities to meet.

Interaction between parliaments is not confined only to participation in interparliamentary fora. Sharing of information also plays an important role. Most national parliaments have opened representation offices within the premises of the EP, where they have at least one representative.¹² The opening of representative offices of national parliaments at the premises of the EP has been one of the most successful initiatives to promote interparliamentary cooperation. These offices facilitate both the flow of information and the establishment of contacts. A recent COSAC report mentions ‘networking, exchange of early information and coordination with other representatives’ (COSAC, 2009a) as one of the increasingly important functions of these representation offices. A regular meeting between national representatives takes place every week. This is the so-called MMM (Monday Morning Meeting). Regular meetings with EP officials in charge of relations with national parliaments do also take place. The existence of these meetings is not an indicator of cooperation but it seems that the spirit among delegates helps the frequent exchange of information that may be relevant for other parliaments (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010).

The scrutiny of EU policies requires information and this has been reflected in the parliamentary cooperation structures. In a memorandum adopted by the Conference of European Union Speakers in Rome on 22-24 September 2000, the Speakers proposed measures to promote cooperation and the exchange of information between institutions

¹² The Maltese parliament and Slovakian parliament do not have a representation office. For years the Spanish Cortes did not have a representation office but after the entry into force of the Lisbon Treaty the Spanish Cortes decided to open a representation office.

and parliaments in the Union. To this end a system of information sharing through the Interparliamentary EU Information Exchange Network (IPEX) was created in 2004. IPEX is ‘a platform for the electronic exchange of EU-related information between parliaments in the Union’¹³ allowing national parliaments to publish any relevant documents on a pan-European website. In particular the IPEX website contains a database for the exchange of information about parliamentary scrutiny of EU affairs including aspects of subsidiarity. It also includes a calendar of Interparliamentary Committee Meetings and fora for the exchange of views. The first IPEX website was launched in 2004 and it was hosted at the European Centre for Parliamentary Research Documentation server. The site comprised a number of relevant links to the web sites of those national parliaments that were part of the IPEX.

The new website (www.ipex.eu), built around a database, was launched in July 2006. This website allows parliaments to upload proposals from the European Commission and assign various status values to the documents. In this way it is possible for any country to follow the development of specific issues and also to keep track of the standpoint of other countries. IPEX also allows parliaments to share for instance documents they have produced during the process of scrutiny of particular EU bills providing them with the opportunity to flag important issues to other parliaments. One cannot expect officials in national parliaments to follow IPEX closely. However, ‘when a national parliament’s representative in Brussels finds something important, this is communicated to their colleagues who then report to national capitals for specialists there to be aware’ (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010).

With a more modest objective, the European Centre for Parliamentary Research Documentation (ECPRD) also provides for possibilities for the exchange of information, ideas and good practice. It focuses on the administrations of the parliaments and its scope is broader than the EU. The ECPRD was created in 1977 at the request of the Conference of Speakers of European Parliamentary Assemblies (as from 2004: the European Conference of Presidents of Parliaments). The objectives of

¹³ Information gathered from the IPEX website [<http://www.ipex.eu>].

the ECPRD are promoting the exchange of information, ideas, experience and good practice among the administrations of parliaments in Europe on subjects of common interest; strengthening close cooperation among parliamentary services in all fields of parliamentary administration, legislation, information, research and documentation; and collecting, exchanging and publicising studies produced by parliamentary services.

Table 1. Typology of Interactions

Nature of interaction	Level of interaction	Actors	
		Individual	Collective
Formal	<i>Individual</i>	Party meetings where MEPs and MPs participate Meetings for MPs and MEPs organised by National representatives	Information exchanged via IPEX
	<i>Committee</i>	MEPs taking part in national parliament committees	COSAC Interparliamentary Committee meetings
	<i>Institutional</i>	Conference of the Speakers MEPs taking part in national parliamentary plenary sessions Information exchanged via Brussels representation offices	Joint Parliamentary Meetings Information exchanged via ECPRD
Informal	<i>Individual</i>	Informal meetings between MEPs/MPs Informal contacts with MPs from other parliaments Informal contacts between MEPs and national parliaments representatives	
	<i>Committee</i>	Information sent out by committees of national parliaments to individual MEPs	Information sent out by committees of national parliaments to EP committees
	<i>Institutional</i>		Information exchanged via Brussels representation offices

As can be seen, interactions between parliaments can take different forms. Table 1 provides a typology of interactions between parliaments. It has been arranged along the lines of the different actors taking part in the interaction (individual, collective); the

nature of the interaction (formal, informal) and the level at which interaction occurs (individual, committee, institutional)

The parliamentary scrutiny of Europol takes place at committee level. For this reason this research will pay special attention to COSAC and to Joint and Interparliamentary Committee Meetings. Also, given the importance of information sharing it will look at the information shared via IPEX, which is the main vehicle for formal exchange of information. Previous research (Ruiz de Garibay, 2010) has shown that representatives of national parliaments in Brussels are among the most active participants in cooperation. Therefore mode of cooperation will also be a form of cooperation this research will look at.

This section has identified the different interparliamentary modes. The next section explains how to assess the extent to which these various activities have provided opportunities for the scrutiny of Europol.

Indicators of Interparliamentary Control

Based on the definition of interparliamentary cooperation provided in the first section of this chapter and considering the existing interparliamentary initiatives, this research has built a set of indicators in order to assess the extent to which the scrutiny of Europol has taken place in such initiatives.

Indicators

Exchange of information and best practice in the parliamentary scrutiny of Europol:

- Number of COSAC reports on how scrutiny of Europol is done in national parliaments
- Number of interventions in COSAC referring to how scrutiny of Europol is done in national parliaments
- Number of reports of national parliaments on how scrutiny of Europol is done shared with other parliaments
- Number of interventions in debates in European Affairs Committees referring to how scrutiny of Europol is done in other national parliaments

- Number of references in national parliament reports on how scrutiny of Europol is done in other national parliaments

Exchange of information regarding Europol's activities:

- Number of COSAC reports on Europol's activities
- Number of COSAC meetings discussing Europol's annual report
- Number of Joint Committee Meetings discussing Europol's annual report

Exchange of information regarding legislative proposals affecting Europol's activities and remit:

- Number of reports on the scrutiny of legislative proposals affecting Europol's activities and remit shared on IPEX
- Number of reference to reports shared in IPEX regarding proposals affecting Europol's activities and remit on reports from other parliaments
- Number of references to reports shared in IPEX regarding proposals affecting Europol's activities and remit on debates in other parliaments

Coordination of scrutiny procedures:

- Number of times the same question regarding the scrutiny of Europol's activities is been asked in different parliaments
- Number of times the same question regarding the scrutiny of Europol's activities is been asked in different parliaments
- Number of times the same question regarding a proposal affecting Europol's remit is been asked in different parliaments

COSAC

- Level of responsiveness to COSAC reports¹⁴
- Number of representatives sent to COSAC
- Number of interventions / initiatives in COSAC
- Binding nature of the resolution of this body

¹⁴ COSAC reports are based on a questionnaire sent beforehand to every parliament. The level of response to this questionnaire is accessible at [<http://www.cosac.eu/en/documents/biannual/>]

IPEX

- Volume of documents uploaded in IPEX¹⁵
- Number of references in parliamentary reports of documents obtained via IPEX
- Number of references to documents obtained via IPEX in committee sessions

Interparliamentary Committee Meetings

- Number of visits of delegations of national parliaments to EP's committees
- Number of Joint Committee Meetings
- Number of Interparliamentary Committee Meetings
- Number of Interparliamentary Committee Meetings

This research has also assessed the importance attached to the control of Europol. A way to do this is by looking at the total number of meetings and initiatives dealing with this issue. For this I have used statistics provided by the European Parliament's Directorate for Relations with National parliaments. Another indicator used was the number of speeches at the plenary meetings of the EP dealing with the parliamentary control of Europol and with the different modes of cooperation.

Particularly in the case of the European Parliament, if an issue is discussed at plenary level this is already a sign that a lot of importance is attached to it. This research has looked at all plenary debates that have taken place in the European Parliament between 1999 and 2009. The following databases offer access all the speeches made in plenary between 1999 and 2004 and between 2004 and 2009. This division corresponds with the EP's parliamentary sessions:

- 1) <http://www.europarl.europa.eu/activities/plenary/cre/calendar.do?language=EN>
 - 2) <http://www.europarl.europa.eu/activities/archives/cre/search.do?language=EN>
- (Both web pages were last accessed on 15 January 2010).

The advanced search option allows the researcher to search for keywords on the title and in the text of the debates. I have searched for keywords in titles because the debates are reported in their original language while the title of the debate is provided in

¹⁵ This website [<http://www.ipex.eu/ipex/cms/home/Documents/LastScrutiny>] provides access to a database where it is possible to see the documents each national parliaments has upload into IPEX

English. Another reason for searching titles only is that the title of a debate provides information about which topic is been discussed in that debate.

The following keywords have been used: ‘Europol’, ‘National parliaments’, ‘Parliamentary Cooperation’ and ‘COSAC’. These are used in order to identify whether these terms were part of the titles of the plenary debates. The presence of the words in the title of a debate will indicate that such an issue is discussed. These words have been combined in order to identify speeches dealing with more than one element:

- European Parliament AND COSAC
- National parliaments AND COSAC
- European Parliament AND Europol
- National parliaments AND Europol
- European Parliament AND cooperation AND COSAC AND Europol
- National parliaments AND cooperation AND COSAC AND Europol

The aim of this refined search is to capture the number of debates dealing with ‘European Parliament’ and ‘Europol’ on the one hand and ‘National parliaments’ and ‘Europol’ on the other hand, as compared to the total number of debates dealing with Europol. Similar comparison is done for the issue of COSAC. A further level of comparison was carried out adding the words ‘cooperation’ and ‘Europol’. In this way it is possible to compare the number of debates containing the words ‘European Parliament and COSAC’ in the title with those containing also the words ‘cooperation’ and ‘Europol’. Similar search was done in the case of national parliaments. The existence of such debates indicates that the issues related to Europol and COSAC are discussed in the same debate.

Apart from a quantitative approach to cooperation and interparliamentary control, this research is interested on a qualitative assessment of how much parliamentary control is happening and what the opinion of different parliaments is. For this reason quantitative indicators have been combined with an qualitative analysis of evidence.

Analysis of Evidence

The database IPEX has been used in order to assess both the quantity and quality of the information shared, as well as to determine whether information regarding the scrutiny of legalisation modifying Europol has been shared. This particular interest paid to changes in Europol's legal framework is due to the fact that it is when this legislation is negotiated that interparliamentary cooperation solutions for the parliamentary control of the agency have been discussed. These are the most significant pieces of legislation that have modified Europol's legal framework, upon which this research has focused on:

- 26/07/1995 Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention)
- 27/11/2003 Council Act of 27 November 2003 drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), a Protocol amending that Convention
- 06/04/2009 Council Decision of 6 April 2009 establishing the European Police Office (The procedure started in 2006)

As IPEX database was built only in 2004, it has been possible to track the exchange of information only for the last act: the Council Decision on Europol, which is by far the most significant modification on Europol's legal framework. Moreover this modification improved significantly parliamentary control over Europol. For this act national parliaments and the European Parliament have shared via IPEX documents they have produced during the scrutiny of that piece of legislation. These documents give evidence of the position of different parliaments regarding the key issues of negotiation including those referring to the option of including parliamentary cooperation solutions for the parliamentary control of Europol. The assessment of these reports has answered the following questions:

- Q1: What do parliaments expect from the modification of the legal framework of Europol?
- Q2: What is the desired level and form of parliamentary cooperation?
- Q3: What are the positions defended?
- Q4: Why is parliamentary cooperation defended?

This study is interested not just in the total volume of information that is shared, but also in whether there is information shared specifically in relation to the scrutiny of Europol and in what the quality of that exchange is. IPEX allows national parliaments not only to share documents but also to include comments or to flag the documents considered particularly important. According to parliamentary officials when parliaments flag documents or attach comments to them such as ‘important information’ this increases the uses of IPEX in capitals (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010). However, the database does not provide any means to know who has looked for such information or even how many times that information has been seen. For this reason, in order to assess the effects that information shared in IPEX has had in the scrutiny of other parliaments this research has looked for references to information retrieved from IPEX on the scrutiny work (debates and reports) of all the parliaments studied¹⁶. This is precisely the relevance of the already motioned indicators:

- Number of reference to reports shared in IPEX regarding proposals affecting Europol’s activities and remit on reports from other parliaments
- Number of references to reports shared in IPEX regarding proposals affecting Europol’s activities and remit on debates in other parliaments

Regarding the assessment of this information shared, we can distinguish between a quantitative and a qualitative use of IPEX. A quantitative use of IPEX would imply that in a debate or a report one parliament recalls information retrieved from IPEX regarding the fact that another parliament or a number of them have taken some action regarding the scrutiny of a measure. However, in this case no information or detail is given in order to explain the reasons behind that action. A qualitative use of IPEX however, implies that information retrieved from IPEX would be given in order to provide an explanation for the motivation of the scrutiny action of some other parliament.

The selection of reports and debates has been different for every parliament because every parliament produces different documents and also because the ways these

¹⁶ For criteria of selection of parliaments, see ‘Selection of Parliaments’ section later in this chapter.

documents are stored and accessed are different in each case. The following databases have been used:

The Spanish parliament:

Search engine for speeches (advanced search)

[<http://www.congreso.es/portal/page/portal/Congreso/Congreso/Intervenciones/Busqueda%20avanzada>]

This database of the Spanish parliament gives access to all speeches from 1979 to today, both in plenary and in sectoral committees

The British parliament:

Parliamentary debates can be obtained at [<http://hansard.millbanksystems.com/>]

This database gives access to all speeches made in the UK parliament from 1803 until 2005. The search engines allow selecting the decades one is interested on.

The Italian parliament:

[http://www.camera.it/Camera/view/doc_viewer_full?url=http%3A//banchedati.camera.it/testi/home.htm&back_to=http%3A//www.camera.it/221]

This database gives access to all debates in plenary and committee from 1998 until today.

The Dutch parliament:

[https://zoek.officielebekendmakingen.nl/zoeken/parlementaire_documenten]

This database gives access to plenary documents since 1999 until today.

The European Parliament

The following databases offer access to all the speeches made in plenary between 1999 and 2004 and between 2004 and 2009. This division corresponds with the EP's parliamentary sessions.

Debates on to the period 2004-2009

[<http://www.europarl.europa.eu/activities/plenary/cre/calendar.do?language=EN>]

Debates of the plenary meetings 1999-2004

[<http://www.europarl.europa.eu/activities/archives/cre/search.do?language=EN>]

In order to assess the use that parliaments have made of COSAC and the extent to which this forum is used for the scrutiny of Europol, this research has analysed the minutes of all COSAC meetings from when it was founded in 1989 to the 2010 meeting in Madrid. The aim of this analysis was to find out debates in which Europol was discussed. Whenever possible, only for those documents available in electronic format, an initial search of the keywords 'Europol' and 'Police' was made in order to find out the debates dealing with such issues. The presence of issues related to Europol in the agenda of COSAC meetings has also been used to determine whether and when Europol was discussed in COSAC. A similar thing has been done with COSAC biannual reports. These reports are done in preparation for the COSAC meetings and represent the main vehicle for the sharing of best practice among the parliaments of the EU. Further, lists of participants to all COSAC meetings have been analysed in order to find out the size of delegations sent to COSAC, as this is an indicator of resources devoted to cooperation. This analysis has searched variation across parliaments, across time and across issues dealt with on the COSAC meeting. Another objective of this analysis was to discover whether the membership of MPs (in sectoral committees in their own parliament) varies according to the issue discussed in the meeting. This would be a sign of a tendency towards more specialized COSAC meetings. For some meetings, minutes, agendas and participants lists are available at the website of COSAC [www.cosac.eu]. The Permanent Member of the COSAC Secretariat Ms. Loreta Raulinaitytė generously provided me with the minutes, agendas and participants lists that were not available on the website.

Apart from COSAC this study has also paid attention to other Interparliamentary Committee Meetings that have dealt with the issue of the parliamentary control of Europol. The minutes and resolutions, as well as the questionnaires prepared in advance of the meetings (when those existed) of the following meetings have been analysed:

First Interparliamentary Conference on the Democratic Control of Europol organised at the Dutch parliament (7-8 June 2001).

Joint Parliamentary Meetings on issues related to JHA:

- 17-18 October 2005, Joint Parliamentary Meeting “Liberty and Security: Improving Parliamentary Scrutiny of Judicial and Police Cooperation in Europe”
- 2-3 October 2006, Joint Parliamentary Meeting “From Tampere to The Hague: moving forward? Progress and shortcomings in the AFSJ”
- 11-12 of June 2007, Joint Parliamentary Meeting on the Future of Europe
- 3-4 December 2007, Joint Parliamentary Meeting on the Future of Europe
- 16-17 November 2009, Joint Parliamentary Meeting Building a Citizen’s Europe

Joint Committee Meetings on Justice and Home Affairs (LIBE Committee)

- 26-27 November 2007, LIBE - Committee on Civil Liberties, Justice and Home Affairs Joint Committee Meeting with National parliaments – ‘The future of the EU as an area of freedom, security and justice’
- 19-20 January 2009, Joint Committee Meeting ‘Progress in the area of Freedom, Security and Justice’
- 18 December 2006, LIBE - Committee on Civil Liberties, Justice and Home Affairs ‘An efficient and accountable police cooperation in the EU: the way forward’
- 10 April 2007, LIBE - Committee on Civil Liberties, Justice and Home Affairs ‘The future of Europol’

This study has also looked at the opinion of parliaments regarding cooperation and parliamentary control. This requires a qualitative analysis of the reports in which parliaments have expressed their views on this issue. National parliaments have chosen COSAC for this purpose and the European Parliament has issued its own reports. Europol was also discussed at the European Convention. I have analysed the speeches, plenary sessions, working group reports and minutes submitted to the European Council (as provided by the Council). The assessment of the reports has tried to answer the following questions:

- What do parliaments expect from cooperation?
- What is the desired level and form of cooperation?

- What are the current Europol scrutiny mechanisms?
- What are the opinions of those writing regarding interparliamentary cooperation?

National parliaments have expressed their views in the following documents:

- COSAC report n. 9 (May 2008) This report reflects the views of national parliaments regarding the new possibilities offered by the Lisbon Treaty for influencing JHA via COSAC.
- COSAC report n. 11 (May 2009) This report offers a systematic review of the role of national representatives, key subjects for cooperation amongst parliaments. (p. 23).

The EP or committees thereof have expressed their views regarding cooperation in the following documents:

- European Parliament (1996) 'Relations between the European Parliament and the national parliaments', Institutional Affairs Committee by Neyts-Uyttebroeck, A. [Report INI/1996/2145].
- European Parliament (2001) 'Relations between the European Parliament and the national parliaments in the European construction', Constitutional Affairs Committee by Napolitano, G. [Report INI/2001/2023].
- European Parliament (2008) 'Development of the relations between the European Parliament and national parliaments under the Lisbon Treaty', Constitutional Affairs Committee by Brook, E. [Report INI/2008/2120].
- European Parliament (2009) 'Resolution on the development of the relations between the European Parliament and national parliaments under the Lisbon Treaty' [Report 2008/2120(INI)].

The EP has specifically referred to cooperation in relation to the scrutiny of Europol in:

- European Parliament (2008) 'Resolution on the annual debate on the progress made in 2007 in the Area of Freedom, Security and Justice (AFSJ) (EU Treaty Art.2 and Art.39) [Report P6_TA(2008)0458]

The EP has addressed the issue of democratic accountability of Europol in the following documents (this is not exhaustive, more documents are listed in the bibliography):

- European Parliament (1994) 'Europol', Civil Liberties and Internal Affairs Committee by Nassauer, H. [Report INI/1994/22/21].
- European Parliament (1995) 'Resolution on the Europol Convention' [Report RSP/1995/2600].
- European Parliament (1998) 'Europol: place, competencies and parliamentary control', Civil Liberties and Internal Affairs Committee by Nassauer, H. [Report INI/1998/2216].
- European Parliament (1999) 'Recommendation to the Council on Europol: reinforcing parliamentary controls and extending powers' by Nassauer H. [Report A4-0064/1999].
- European Parliament (2002) 'Resolution on the progress made in 2001 towards the establishment of the Area of Freedom, Security and Justice provided for in Article 2, fourth indent, of the TEU' [Report P5_TA(2002)0048 B5-0099/2002].
- European Parliament (2003) 'Europol's future developments', Citizens' Freedoms and Rights, Justice and Home Affairs Committee by Turco, M. and Von Boetticher, C.U. [Report INI/2003/2070].
- European Parliament (2004) 'Recommendation to the Council and to the European Council on the future of the Area of Freedom, Security and Justice as well as on the measures required to enhance the legitimacy and effectiveness thereof' [Report 2004/2175(INI)].
- European Parliament (2008) 'Legislative resolution on the proposal for a Council decision establishing the European Police Office' [Report A6-0447/2007].
- European Parliament (2009) 'Annual debate on the progress made in 2008 in the Area of Freedom, Security and Justice' [Report P6_TA-PROV(2009)0329].

National parliaments have addressed the issue of the control of Europol in the following documents:

- COSAC report n. 11 (May 2009) This report deals with the parliamentary control of Europol in each national parliament (p.10).
- COSAC report n. 3 (May 2005) This report provides a good insight on the relevant practices in place in each country for the scrutiny of EU affairs.
- COSAC report n. 8 (October 2008) This report provides information regarding parliamentary control of Europol. Section 3 Country-specific procedures for scrutinizing European matters in national parliaments (p. 19); and section 5 Role of national parliaments in the area of freedom, security and justice under the constitutional treaty (p. 83) are particularly relevant.

These reports provide the official opinion of parliaments as well as empirical evidence on information shared. However, they do not offer the views of participants. On the other hand, a big proportion of cooperation is supposed to take place due to personal contact between MPs and MEPs and due to relations between representatives of national parliaments in Brussels. For this reason it is important to combine the evidence obtained from the reports with personal interviews from participants. Similarly, participant observation allows the researcher to examine the dynamics of the phenomenon studied.

Interviews and Participant Observation

Conclusions from the assessment of documents have been contrasted with information extracted from interviews. I have also attended an interparliamentary committee meeting on the issue of democratic control of Europol at the European Parliament in Brussels (4-5 October 2010). Interviews can provide vital information but one needs to be aware that interviews reflect the personal opinion of interviewees. Given the future of the parliamentary control of Europol is currently been discussed interviews have been crucial in order to understand the fora preferred by actors as well as the capacity of powerful actors to influence the interparliamentary practices developed in this field.

Both MEPs and MPs have been interviewed. It is important to include the two levels of parliaments as when talking about scrutiny of 'European Affairs' the vision and the work of MEPs and MPs is different. Therefore MEPs of the Civil Liberties, Justice and

Home Affairs (LIBE) Committee of the European Parliament and MPs of national parliaments working on the scrutiny of Europol have been interviewed. Apart from that, other three criteria have been followed when selecting parliamentarians for interviews. The first criterion was the country of origin, or in the case of MEPs the country where the MEP was elected. As it has been explained, although this study does aim at providing a general understanding of cooperation, rather than comparing different practices in different parliaments, the parliaments of Spain, The Netherlands, The United Kingdom and Italy have been studied in more detail. The second criterion was that parliamentarians should be working on issues related to the parliamentary control of Europol. And finally the third criterion was that those parliamentarians were involved in parliamentary cooperation. Particularly relevant have been the interviews I conducted with the rapporteur of the Europol Council Decision and with the former Spanish minister of Justice and current chairman of the LIBE Committee at the European Parliament.¹⁷

At an early stage of the research it was identified that a great deal of cooperation takes place through the representatives of national parliaments in Brussels. Therefore the representatives of the national parliaments mentioned above were interviewed. I also interviewed the representative of the Danish parliament because of the relevant role the Danish parliament plays on the scrutiny of European Affairs and also because this person has a lot of experience working as a representative of his parliament in Brussels. These officials have provided an ‘institutional memory’ that elected politicians due to their limited term of office do not always have. Officials of the EP division in charge of relations with national parliaments have also been interviewed. The criteria followed for the selection of these officials was similar to that followed for the selection of parliamentarians. I selected those officials responsible for the parliaments and the policy areas I was interested on. But there was one further criterion: the type of cooperation these officials were responsible for. Cooperation seems to be taking place in three main different ways, namely: cooperation between representatives of national parliaments, cooperation at committee level and cooperation in COSAC. I therefore selected officials working on these three types of cooperation. Another two officials interviewed were the

¹⁷ A full list of interviewees and interviews typescripts are available in Appendix A.

Head of Unit of the LIBE Committee and the permanent member of the COSAC Secretariat. As the Committee of the EP dealing with the scrutiny of Europol, the Secretariat of the LIBE Committee is an important player for the development (or not) of cooperation in this field. A similar thing can be said of the COSAC Secretariat. The COSAC Secretariat is also a relevant player and it has made a great effort to compile and to publicise the diverse voices of national parliaments. Moreover, both the COSAC Secretariat and the EP Secretariat seem to have confronted views on what parliamentary cooperation for the parliamentary control of Europol should look like in the future, particularly regarding the type of forum around which national parliaments and the EP should come together. It is not surprisingly that the COSAC Secretariat prefers this forum to be COSAC while the Secretariat of the EP would rather prefer a forum like the committee meetings the LIBE Committee organises with national parliaments.

Selection of Parliaments

This research looks at interparliamentary practices of parliamentary control in the case of Europol in general but four national parliaments plus the EP have been studied in more detail. These are the parliaments of Italy, Spain, The United Kingdom and The Netherlands. The following paragraphs explain the reasons for the selection of these different parliaments.

These parliaments have been selected according to two criteria: 1) the effectiveness of the EU scrutiny system in general and for JHA in particular; 2) cooperation expected from each parliament. The intention is to have cases from a wide enough spectrum.

For the criterion strength of parliaments I followed Kiiver's analysis (2006a:43-71). Kiiver describes a set of criteria that could be used to judge the effectiveness of the EU scrutiny of a given parliament. Those criteria are:

- Time at which scrutiny takes place
- Relative centralization of the scrutiny system
- Methods of scrutiny
- Relative 'strength' of national parliaments

- Availability of information for scrutiny

Time at which the scrutiny takes place: *ex-ante* or *ex-post*

Scrutiny of EU policies by national parliaments could be divided into two distinct phases: *ex-ante* and *ex-post*. *Ex-post* scrutiny refers to the scrutiny done after the legislation in question has been agreed at the Council or after EU policies have been enhanced. It covers the questioning of Ministers or the Government as a whole and it could also take the form of investigative reports on the effect and desirability of particular EU measures already in place. By contrast, *ex ante* scrutiny refers to actions taken by national parliaments in order to scrutinize EU measures before they are approved or even negotiated. Notably this involves reviews of the Commission's legislative proposals and other EU documents. Scrutiny of pre-legislative texts such as Commission consultation papers and Green and White Papers give parliaments an overview information of future policy developments and is also part of *ex-ante* scrutiny. As part of this process, parliaments might also request ministers to provide a memorandum explaining every EU document received by the parliament. Parliaments can also ask ministers to appear in plenary or at specific commissions to provide explanations. The aim of *ex-ante* scrutiny is to influence as early as possible the outcome of future Council decisions. Some parliaments have the power of mandating ministers who are attending council meetings. The nature of those mandates varies from politically binding, in the cases of Finland and Sweden, to legally binding ones, in the cases of Austria and Denmark. In the Netherlands, the Tweede Kamer can mandate the Government on JHA matters. Apart from institutionalized mandates, parliaments can also use informal pressure and some of them have put in place suspensive scrutiny reserves, as is the case in the UK and Italy. Scrutiny reserves prevent the government from agreeing to any legislative proposal that is still being scrutinised by parliament. Scrutiny reserves can be statutory, as it is the case in Italy, or have a more political nature, as it is the case in the UK.

The degree to which national parliaments participate in these two phases – before and after decisions are taken – varies amongst national parliaments. And so does their capacity to influence decisions and monitor the implementation of policies and EU

decisions. The sooner a parliament starts its scrutiny, the greater are its chances of influencing the outcome of decisions.

Relative centralization of scrutiny system

All member states' national parliaments have specialized committees dealing with the scrutiny of the EU. However, the role of these committees in the scrutiny process is different in every parliament. In centralized systems most of the EU issues are dealt in specialized European Union Scrutiny Committees whereas decentralized systems take a more fragmented approach whereby competent sectoral committees also scrutinize EU legislation and policies in their respective policy domains.

The advantage of leaving EU related issues to be dealt with by specialized committees is that those committees have specialized knowledge about the EU and are able to deal with scrutiny in a more efficient manner. The problem of this centralized system is that it lacks the 'institutionalized input of sectoral experts' (Kiiver, 2006a: 49). Parliaments with a very centralized system risk isolating EU issues and to a certain extent MPs on specialised EU committees from the general work of Parliament. On the other hand, inputs from sectoral committees might delay scrutiny. A mid-way option between fragmentation and centralization is co-ordination by which scrutiny of EU matters is left to sectoral committees but with the assistance and coordination of the European Affairs Committee (Kiiver, 2006a: 52).

In the House of Commons the European Scrutiny Committee scrutinises all EU proposals. As part of the scrutiny process the European Scrutiny Committee can forward documents for discussion in the three Standing European Committees (A, B, C). The European Standing Committees specialize in particular sectors of EU policy and any Member of the House may attend and speak at them. In practice this system allows the House of Commons to isolate EU scrutiny from other issues dealt with in sectoral committees in what Kiiver (2006a) calls a centralised scrutiny system by isolation. This happens for practical reasons and in part due to the lack of interest among MPs on EU issues. A similar situation can be described in the House of Lords. In the House of Lords the European Union Committee and its seven sub-Committees,

each of which covers a different sectoral policy area, do scrutiny of European affairs. Very occasionally, one of the (very few) other Committees (e.g. the Constitution Committee) may look at a European Union issue. The involvement of sectoral committees is very limited due to the specialization of subcommittees, which produces a centralized system but allows for a degree of specialized sectoral inputs. This is opposed to the case of Italy where both sectoral committees of the Senate and the Chamber of Deputies can be involved in the scrutiny of EU affairs. But the opposed case is represented by the Netherlands where nearly all committees of the House of Representatives are involved in the scrutiny of European Affairs. And in the case of the Senate sectoral committees may submit written questions to the government to find out the strategy of the Government regarding EU proposals. In the case of the Spanish parliament, European Affairs are scrutinised by the “Joint Committee on European Affairs”. Nevertheless, sectoral committees can also review some European matters, when relevant. In that case the Bureau of the Congress of Deputies would ask sectoral committees of either chamber to draw up a preliminary report. The European Affairs Committee might also establish temporary subcommittees (called *ponencias*). In principle this would allow for a certain degree of specialization but in practice these subcommittees are not very technical in nature (Closa, 1996:143). Hence, the Spanish scrutiny system is effectively a centralized system.

Methods of scrutiny

Parliaments can be divided into three groups according to this criterion: mandate givers, systematic scrutinizers, and informal influencers.

Mandate givers can issue either legally or politically instructions for the ministers taking part in Council meetings. Examples of mandate givers are the parliaments of Denmark, Sweden, Finland, Estonia, Latvia, Slovenia, and the Austrian Nationalrat. The Dutch Tweede Kamer can mandate the Government on JHA matters. Mandates can be legally or politically binding and they differ on how tight they are defined. As Kiiver (2006a:55) notes, the Austrian Nationalrat exemplifies a case of a mandate that is formally very strong, providing even the possibility of prosecution of a Minister if the mandate is not followed; in practice, however, mandates are worded in a broad manner.

On the other hand, parliaments might not have a formal mandate power but they might have a certain degree of political influence by which ignoring strong views of parliament would be very difficult for government. They may also possess the right to assent. Regardless of the power of mandate, the obligation of a national government to consult its own parliament on decisions to be agreed on Council varies. This obligation would obviously influence the extent to which parliaments could influence government position and establish the basis of a possible *ex-post* call to account.

Some EU scrutiny systems are not designed to seek to systematically mandate ministers formally or informally. They aim at influencing EU documents at an early stage of the decision-making process. Parliaments have developed different systems of filtering documents. Typically, the responsible committee for EU scrutiny will report its chamber on the importance of each document and determine which document merits further analysis (COSAC, 2008a:8). The efficiency of this method varies amongst parliaments. Systematic scrutinizers carry out a systematic sifting of all the EU documents they receive whereas other parliaments focus only on certain documents considered more relevant. Typical examples of systematic scrutinizers are the UK House of Commons, the German Bundestag and the French Assemblée Nationale. These systems, as is the case of the UK parliament, can be accompanied by a scrutiny reserve. A scrutiny reserve prevents the government from agreeing to any legislative proposal that is still being scrutinised by parliament. Scrutiny reserves can be statutory, as in Italy, or have a more political nature, as is the case in the UK. However, the simple existence of a scrutiny reserve does not automatically make a parliament qualify as a systematic scrutinizer. For instance, the Italian parliament does operate a scrutiny reserve but it is considered to be an informal influencer. The last type of parliaments is the informal influencers, which includes those parliaments that do not carry out a systematic sifting of documents and do not aim at influencing legislation at an early stage or seek to influence the position of their governments in Council. The parliaments of Italy and Spain could be cited as examples.

The relative ‘strength’ of parliaments

According to Kiiver, the inclusion of this criterion corresponds to the hypothesis that the relative strength of a parliament in the national political system has an influence on its scrutiny system. This hypothesis presents the methodological problem that it assumes a dynamic of parliament vs. government as well as seeing parliaments as unitary institutions (Kiiver, 2006a:60-1). However one should not undermine the impact parliaments have or can have on their governments' policy formulation at the Council as well as the impact they can have scrutinizing government actions. On the other hand as Saalfeld (2005) argues, national parliaments do not abdicate from the scrutiny of EU affairs but they rather delegate it to the government.

Norton (1996:1-2) classifies parliaments (or types of legislatures) as policy-making, policy influencing and no policy affect legislatures depending on the capacity of different parliaments to influence the legislative process. Using this classification to analyse the work of national parliaments regarding the EU and particularly its scrutiny functions bears the problem that a so-called influencing legislature at home might not be so influencing regarding EU legislation or scrutiny or vice-versa. For instance, the Italian parliament is close to being a policy-making legislature (Norton, 1996:1-2) but it can hardly be considered strong in EU scrutiny (See Lord, 2004:170 particularly Table 7.2). Yet, and despite some exceptions, strong parliaments are indeed capable of creating stronger scrutiny systems. The literature (Arter, 1996; Norton, 1996; Maurer and Wessels, 2001; Lord, 2004; Kiiver 2006a) pictures the Danish parliament where ministers are briefed and mandated as 'indisputably strong' (Kiiver, 2006a:62). The parliaments of Sweden, Austria and Finland that have adopted the Danish model are strong or moderate. The Dutch parliament, whose assent is needed in JHA, appears as strong in this area and moderate in the rest policy areas. The UK House of Commons is moderate and the parliaments of Spain and Italy appear to be weak mainly due to the presences of a 'passive or reactionary parliamentary attitude as regards the government's policy formulation, a low level of expertise among MPs in European affairs, and little interest in scrutinizing this policy area. Scrutiny tends to be fragmented among the sectoral committees or effectively isolated in the European Affairs Committee, and oversight is carried out ex post, if at all' (Kiiver, 2006a:62).

Availability of information

Without information it is difficult to design an effective strategy or an action plan. For Neunreither (1994) this criterion should pay attention to whether information received by national parliaments is systematic or the government can filter what information parliaments receive. Part of this problem was solved when in 2006 the Commission started the transmission of its proposals directly to national parliaments. However what is interesting from our point of view is not what information is available strictly speaking but what information parliaments take into account, when and how.

Some parliaments as is the case in both chambers of the UK parliament do consider all EU texts susceptible of scrutiny. And have elaborated tight definitions of what constitutes an 'EU text' (See COSAC, 2007c:19, Footnote 1 for the definition). By contrast, other parliaments do not have such a systematic approach to documents and only consider those that are of political relevance (COSAC, 2007d:75). The type of information considered by national parliaments is important. For instance, before 1991 the French Assembly sought to enhance its information by turning to the European Parliament with the unwanted consequence that it was better informed on wider EU policy developments than with the positions of the French government (Dimitrakopoulos, 2001:410).

For the criterion expected cooperation I used the following indicators to assess each parliament's real possibilities for cooperation:

- Presence of a representative office in Brussels
- Participation of MEPs in national parliaments
- Participation in European Affairs Committees
- Participation in Sectoral Committees
- Participation in Plenary Debates
- Meetings between at European Affairs Committee members and MEPs

Representation offices at the European Parliament not only serve the purpose of reporting back to national parliaments on the work of the EP, they also provide opportunities for networking and collaboration amongst different national parliaments.

Meetings between representatives of different parliaments in Brussels are frequent and the exchange of information between them is common (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010). Additionally, these offices can serve as gate-openers for relations between national parliaments and the EP. The presence of representatives in Brussels increases the chances for national parliaments to take part in interparliamentary cooperation activities by facilitating access for MPs to European instructions and increasing the flow of information between the various parliaments of the Union including the European Parliament. Interviews undertaken for this research have put in evidence that an important factor for cooperation to take place in the field of JHA is the accessibility of MEPs to national parliaments (personal interview with Mr. Emilio De Capitani, Head of Unit LIBE Committee Secretariat). This access is regulated in different ways in different parliaments for which the potential opportunities for cooperation in each parliament varies. Table 2 provides a summary of the participation of MEPs in their national parliaments.

Table 2. Participation of MEPs in their national parliaments.

member state	Participation European Affairs Committee		Participation in Sectoral Committees		Participation in Plenary Debates		Meetings with MEPs /MPs at EAC	
	Yes	No	Yes	No	Yes	No	Yes	No
UK House of Lords		X		X		X	X	
UK House of Commons		X		X		X	X	
Italian Senate		X		X		X	X	
Italian Chamber of Deputies	X			X		X	X	
The Netherlands House of Representatives	X		X		X			X
The Netherlands Senate		X		X		X		X
Spain Congress and Senate	X			X		X		X

The Spanish parliament is an example of a parliament from a traditionally pro-integration country with a weak EU scrutiny system to the extent that the parliament plays a role of just an informal-influencer in regards to EU policy (Kiiver, 2006a). Until 2010 the Spanish parliament was amongst the very few parliaments that had not yet opened a representation office at the European Parliament in Brussels. For these reasons the extent to which the Spanish parliament have been able to take part in interparliamentary cooperation might have been limited (Ruiz de Garibay, 2010). Relations between Spanish MPs and MEPs take part informally along political lines. There was an attempt to create a procedure for maintaining contact between MPs of the European Affairs Committee and the Spanish MEPs through working and informative meetings decided on by common agreement between the European Affairs Committee Bureau and the leaders of the Spanish delegations in the EP. But the initiative came to nothing and such meetings were not held (Closa, 1996:142). On the other hand, Spanish MEPs may attend to the meetings of the European Affairs Committee although they do not have voting rights. The Spanish parliament has not developed any special measures for scrutiny of Europol or other JHA agencies.

The Italian parliament is an example of a national parliament with well-developed scrutiny mechanisms, at least in institutional terms. For instance, it has a specific parliamentary committee for the control of Europol. Though it is generally classified as a policy-making legislature (Norton, 1996:1-2), it is not particularly strong in the scrutiny of the EU (Kiiver, 2006a). Thus, the Italian parliament shows that more than just formal rules of scrutiny are needed for effective scrutiny. Regarding the resources available for cooperation one could mention that the Italian parliament has seven delegates at the EP representation office whereas many parliaments have one or two delegates only. Although the Chamber of Deputies allows MEPs to participate in the European Affairs Committee the Senate does not. None of them allow MEPs to participate in other sectoral committees. But both the Senate and the Chamber of Deputies organize a yearly a hearing with Italian MEPs for the consideration of the work and the legislative programme of the European Commission and the multi-annual programme of the Council. Regarding the scrutiny of Europol, the Italian parliament has

a special parliamentary committee called the '*Parliamentary Committee for the control of the implementation of the Schengen Agreement, oversight on the activity of Europol, control and oversight on immigration*'. This committee has conducted enquiries on the implementation of the Europol Convention and on Europol's potential and prospects. Europol activities have been examined through fact-finding enquiries. Particularly relevant is one enquiry carried out in 2003 into Europol's potential and prospects (Italian parliament, 2003) where the committee considered it 'extremely important to establish an actual operational link between the individual national parliaments and the European Parliament' and suggested the creation of a mechanism that it would make possible to coordinate the role of the EP and national parliaments, particularly 'through a regular and institutionalised exchange of information' (COSAC, 2005a:91).

The Netherlands has a parliamentary scrutiny system known for being particularly strong in the control of JHA where the parliament has a right of assent (COSAC, 2005a:58-60). This means that in practice the parliament possesses a mandate power by which the Government is forced to obtain the approval of the parliament before accepting in Council any binding decision in the sphere of JHA. Regarding cooperation, national MEPs can attend committee meetings even when positions for Council meetings are discussed with ministers (COSAC, 2005a:95). The parliament of The Netherlands is positive about cooperation with other parliaments to the extent that it celebrated an Interparliamentary Committee Meeting in The Hague where the creation of an interparliamentary forum for the control of Europol was first suggested (Fijnaut, 2002).

As for The United Kingdom, the Westminster parliament is an example of a parliament with a well-developed scrutiny system that allows the parliament to play the role of systematic scrutinizer (Kiiver, 2006a). In order to scrutinise European Affairs the parliament has developed a system by which it sifts all EU documents. Also, the introduction of a scrutiny reserve obliges the government to abstain from agreeing on any proposal in the Council if it is still being discussed in parliament (Kiiver, 2006a:21). Regarding cooperation, the European Affairs Committees of both chambers of the parliament do not allow UK-MEPs to attend their meetings although they

organise meetings twice a year with them (COSAC, 2005a:95). Regarding cooperation with other national parliaments, the British parliament, particularly the House of Lords has been keen on defending national parliaments' right to establish their own scrutiny regarding Europol (Cf COSAC 2010d:257).

Combining the levels of likelihood of cooperation and strength of scrutiny, the selected four parliaments, The United Kingdom, Spain, The Netherlands and Italy, can be arranged as follows:

Table 3. Parliaments Selected.

		Likelihood of cooperation	
		<i>Low</i>	<i>High</i>
Strength of scrutiny	<i>High</i>	United Kingdom	The Netherlands
	<i>Low</i>	Spain	Italy

The United Kingdom represents a country with low likelihood of cooperation and high strength of scrutiny, The Netherlands has high likelihood of cooperation and high strength of scrutiny. Spain has low likelihood of cooperation and low strength of scrutiny, while Italy has high likelihood of cooperation and low strength of scrutiny. In addition to these four national parliaments, the European Parliament is also selected because the scrutiny done by the EP is significantly different from the scrutiny provided by national parliaments. This is so mainly because of the position of the EP inside the EU political system, opposed to the outside position of national parliaments, and because of the EP's full-time focus on EU politics. Comparing the results of the EP with those of national parliaments could be an advantage in judging the effect of the degree of relevance attached to EU scrutiny in each parliament and the relative effect of the position of parliaments on the EU political system.

Conclusion to Chapter 3

This chapter has presented the methods used in this research. These include narrative process tracing, analysis of evidence on particular interparliamentary modes, interviews and participant observation.

Based on the definition of interparliamentary cooperation provided by the Conference of Speakers of EU parliaments, this chapter has proposed a definition for interparliamentary practices of control for Europol. This definition includes two elements: The exchange of information and best practice on the procedures of scrutiny of Europol's activities and legislative proposals affecting its remit and the coordination of those scrutiny procedures. This definition, together with an initial survey of the different interparliamentary practices will help us in defining where to look and what to look for. Indicators of parliamentary control have been used in order to assess the extent to which parliamentary control of Europol takes place in the different interparliamentary modes and to assess its relevance. This has been combined with evidence obtained from reports and parliamentary debates as well as from interviews and participant observation.

Chapter 4 provides a narrative on the development of interparliamentary practices regarding the parliamentary control of Europol from its origins to present. This is important in order to understand how the idea of interparliamentary control practices were introduced and what have been the necessary developments for its implementation. Using the indicators of interparliamentary control. Chapter 5 explains how relevant interparliamentary practices have been and which form have they taken. This empirical evidence is supplemented with information from participants. As this an issue heavily discussed at the moment because further developments are expected as a result of the entry into force of the Lisbon Treaty, interviews provide information on the most recent developments and prospective for the future.

CHAPTER 4

INTERPARLIAMENTARY PRACTICES IN THE PARLIAMENTARY CONTROL OF EUROPOL: A NARRATIVE

Introduction

Europol's future legal framework is subject to an ongoing debate. In particular the debate focuses on how to arrange the future mechanisms of parliamentary scrutiny in line with article 88 of the TFEU. As already mentioned, this article assigns to national parliaments and the European Parliament *together* the political monitoring of Europol. However this is not by any means a debate that has started with the entry into force of the Lisbon Treaty. The idea of establishing a form of collaboration between national parliaments and the European Parliament is far from new. Already in 2001 an interparliamentary conference on the Parliamentary of Europol held in The Hague suggested the need to create a 'network' composed of national parliaments and the EP for the 'exchange of information' regarding Europol (Dutch parliament, 2001). The Commission then borrowed this idea and in 2002 suggested the creation of a joint committee formed of MPs and MEPs who would meet once a year to exchange information and experience and to discuss matters relating to Europol (European Commission, 2002). Since then, both national parliaments and the EP have expressed their views regarding interparliamentary cooperation mechanisms for the parliamentary control of Europol. And the topic has been discussed in several fora including some of interparliamentary nature. This narrates the history of these debates and it analyses the different opinions of different actors involved. While the EP has expressed its views in several reports and resolutions (see Methods Chapter for a list of those documents) national parliaments have mainly used COSAC, the Conference of European Affairs Committees, to enunciate their agenda regarding national parliamentary control of Europol. More recently, other fora such as Joint Committee Meetings and

Interparliamentary Committee Meetings have also dealt with the issue of the parliamentary control of Europol.

In order to develop a narrative for the analysis, three different periods can be distinguished in the history of the discussion of cooperation. The first period goes from the creation of Europol under the Europol Convention in 1995-98 to the early days of the discussions leading to the replacement of the Europol Convention by the Council Decision on Europol in 2006-07. In this period we can distinguish two different stages. In the first stage the debate over the need to improve parliamentary control is introduced by some national parliaments that already at that stage had realised the difficulties of providing parliamentary control. In the second stage the successive modifications to the Europol Convention made evident that cooperation was a way to address weak parliamentary control but nonetheless a bigger role for the European Parliament in the parliamentary control of the agency was also needed. The second period corresponds to the drafting of the Council Decision. During this period parliamentary cooperation as a solution to the weak parliamentary control of Europol seems to lose its momentum, as energies focused on other substantial changes made to the Europol legal framework such as the budget and the attributions given to the European Parliament. The third and last period goes from the time when the Lisbon Treaty entered into force in December 2009 until now. The Lisbon Treaty provides the legal basis for a new legal framework for Europol that will include both national parliaments and the European Parliament in the parliamentary control of the agency. Therefore it is during this last period interparliamentary cooperation proposals reach its peak again.

Origins: Introducing the Idea of Interparliamentary Control

An interparliamentary solution to the parliamentary control deficit of Europol was first suggested in June 2001 in an interparliamentary conference on the democratic control of Europol organised by the Senate and House of Representatives of the Dutch States General. The draft resolution of that conference called on the national parliaments and the EP ‘to set up a network for exchange of information and for taking initiatives – under the name of PARLOPOL’ (Dutch parliament, 2001:151-2). The aim of this network would be on the one hand to overcome information deficits and on the other

hand to serve as a basis for the coordination of the positions of the parliaments. The idea was well received among national parliamentarians most of who lamented the limited involvement of their national parliaments in the parliamentary control of Europol and signalled they had little information about the agency and its work. A member of the French Senate referred to the lack of parliamentary control at national level in the following terms: ‘There is a parliament at national level, which monitors and supervises the work of ministers. That forms the checks and balances. Where is this parliamentary control and supervision in this case?’ (Dutch parliament, 2001:21). Nonetheless, without rejecting the idea of improving parliamentary control already in 2001 some members warned about the problem of the ‘multiplication of parliamentary control structures’ (Dutch parliament, 2001:21).

Following the interparliamentary conference, on 26 February 2002, the European Commission issued a communication to the EP and the Council on the democratic control of Europol where it recommended the establishment of ‘a formal mechanism for information exchange and co-ordination between national parliaments and the EP’ in the form of ‘a joint committee’ consisting of both MPs and MEPs (European Commission, 2002). Albeit modest, this was a concrete proposal for the creation of a joint-committee and gave form to the demands made by national parliaments in the Interparliamentary Committee Meeting in June 2001 at The Hague. Whereas at The Hague conference the proposal was that of creating a ‘network’ for the exchange of information, the Commission went further by suggesting the creation of a ‘joint committee’ of MPs and MEPs. According to the Commission ‘this joint committee could meet twice a year to exchange information and experience and to discuss matters relating to Europol following the example of the Community and European Affairs Committees of the Parliaments of the European Union (COSAC)’ (European Commission, 2002). In principle both the EP and national parliaments broadly supported the idea and the creation of a joint supervisory committee was included in early versions of the Danish proposal to amend the Europol Convention (‘Danish’ Protocol).¹⁸

¹⁸ Protocol drawn up on the basis of Article 43(1) of the Europol Convention amending that Convention (the ‘Danish Protocol’), OJ C 002, 06.01.2004 p. 3.

The proposal of the Danish Presidency for a Protocol amending the Europol Convention had three main objectives: to extend Europol's remit; to increase parliamentary control of Europol's activities; and to facilitate data transfer with third countries. Regarding this last point the Protocol originally tabled by the Danish Presidency contained a provision according to which the 'Presidency of the Council or its representative and the Europol Director may appear before the European Parliament (EP) and before any joint committee that may be set up by the European Parliament in cooperation with national parliaments with a view to discussing questions relating to Europol' (House of Lords, 2002b). In the amended draft of the Protocol the reference to joint committee was later removed, and in the end the proposal of a joint committee was not included in the version upon which general agreement was reached in December 2002. Some national parliaments lamented the exclusion of this measure from the Protocol. In their view 'a joint parliamentary committee would provide a good practicable example of how national parliaments can have a positive input into European decision-making and increase democratic legitimacy' (House of Lords, 2002b).

What can explain the limited importance attached to this proposal? I argue that since the introduction of the debate interparliamentary solutions had the problem of being interpreted as risking hampering the increase in the parliamentary control powers of the European Parliament. One could look at the process of modification of the Europol Convention as a 'compromise' between the need to change the Convention (to accelerate changes in Europol) and the need to assure control (either by national parliaments or by the EP). In this context, every actor will lose or win depending on the result of the Council Decision. The first premise is that both national parliaments and the European Parliament agree on the need to modify the Convention to allow the Europol legal framework to be easily updated. This agreement is reflected on the recommendation of the European Convention's group X (Freedom, Security and Justice) for the 'abolition of the conventions' in the third pillar (The Secretariat of the European Convention, 2002). The second premise is that this change is to be effected through the inclusion of Europol in the European Community Pillar (EU). This requires the EP to gain some control mechanisms. In this context, national parliaments find themselves needing to defend the role of the EP but having to find a solution to protect

their position. Parliamentary cooperation satisfies this need. As the Italian parliament put it, ‘the adoption of an instrument different to the Convention would render indispensable a redefinition of the role of national parliaments in the control and direction of Europol’ (Italian parliament, 2003:222).

As early as 2001, national parliaments seem to understand that the parliamentary control of Europol may change. As Mr. Erik Jurgens, Deputy Speaker of the Dutch Senate put it at the 2001 Interparliamentary Conference on Europol, ‘the reason why the national parliaments have to be involved (in the parliamentary control of Europol) is because the EP has not received complete authority in this matter (Dutch parliament, 2002:11). Maintaining the *status quo* seems the rational option for national parliaments. National parliaments have tried that. But at the same time they have recognised the need for the European Parliament to increase its control powers. For instance, the final report of the Convention Working Group X ‘Freedom, Security and Justice’ suggested the need for a stronger role of the European Parliament while also called for a greater involvement of national parliaments (European Convention, 2002). In the same vein proposals suggesting the amendment of the Europol Convention so that Europol would be accountable to the EP¹⁹ have been criticized with the argument that although an increase in the EP’s scrutiny role is understandable, it is ‘anomalous that formal parliamentary oversight of an essentially inter-governmental institution should be confined to the European Parliament’ (House of Lords, 2003b:14).

A similar strategy is found in the Commission’s Communication on the democratic control of Europol (European Commission, 2002). At first sight the Commission’s 2002 communication on the democratic control of Europol seems to indicate a preference for interparliamentary solutions in order to increase the effectiveness of the parliamentary control over Europol. According to the Commission the creation of a joint committee between national parliaments and the EP was needed due to the ‘fragmented’ nature of parliamentary control shared between 15 national parliaments. In the words of the

¹⁹ 13688/02 Initiative of the Kingdom of Denmark with a view to adopting a Council Act drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), of a Protocol amending that Convention. 11702/02 Proposal for a Council Decision on the financing of certain activities carried out by Europol in connection with cooperation in the fight against terrorism.

Commission 'if all the provisions and procedures regarding parliamentary control existing at national or EU level were made known to all the other parliaments, the situation would already be improved considerably' (European Commission, 2002). In this sense the communication made a clear case in favour of interparliamentary cooperation. However, the Commission made clear that, if Europol were to acquire extended powers, the current parliamentary oversight and the solutions given in the communication, including the creation of a joint committee of national parliaments and the EP, should be revised and 'far reaching measures' (European Commission, 2002) should be put in place. Thus, the role of the EP in providing parliamentary scrutiny would be increased. Indeed, the Commission's communication devoted four of its five recommendations to the need to increase the role of the EP in the parliamentary control of Europol. The Commission suggested, among other things, the amendment of Article 34 of the Europol Convention to enhance the ability of the EP to provide parliamentary control over Europol. Changes included the possibility for the EP to receive the Agency's annual report and to be able to request an exchange of views on the report with the Presidency as well as the right to request the Europol Director to appear before the competent EP committee.

The Commission's position was not contradictory. The Commission considered the creation of a joint committee as a way of providing the EP an entry point into the parliamentary control of the agency and as a first step towards an 'EU-centred parliamentary control' (European Commission, 2002), but the creation of a joint supervisory committee was far from the ideal position of the Commission, which would like to see far more integrationist solutions such as an agency integrated into the EU institutional setting. This has to do with its natural integrationist position but also with the fact that integration into the EU institutional setting would imply that the EU budget would need to provide for the agency and this implies an increase of the EU budget.

In the early stages of Europol's development the EP was concerned with increasing its own parliamentary control powers. For this reason the EP saw national parliaments as potential competitors. In 2002, in a recommendation to the Council on the future development of Europol, the EP made clear its position regarding the role of national

parliaments in the control of Europol. According to the EP, ‘as a European organ, Europol must be monitored by another European organ – the European Parliament – and not by national parliaments’ (European Parliament, 2002a). In the same recommendation the EP asked for a number of improvements in the parliamentary control of Europol including the right to receive the same activity report as the Council and the formal right to hold an exchange of views with the Council Presidency and the Europol Director on the annual activity report (European Parliament, 2002a). However there is no mention of any need to set up a joint supervisory meeting with national parliaments. Moreover, according to the EP, parliamentary control of Europol at a national level has proved overly cumbersome and ineffective as a result of intergovernmental mechanisms. In the view of the EP, a solution to this problem would be ‘to place Europol under the direction and supervision of a member of the European Commission, fully answerable to the EP’ (European Parliament, 1999). The replacement of the Europol Convention by a Council Decision did not fulfil this demand of the EP but the EP acquired a relevant position in the parliamentary control of the agency. Interparliamentary solutions to the problem of parliamentary control were again discussed during the negotiations of the new legal framework for Europol. The next paragraph analyses this event.

Europol Becomes an EU Agency: Setting the Basis for Interparliamentary Control or a Missed Opportunity?

In 2006 in the context of the discussions regarding the inclusion of Europol into the EU the creation of a joint supervisory committee between national parliaments and the EP was proposed again. In its Draft Council Conclusions of 6 April 2006 the Council encouraged the European Parliament ‘to set up a joint EP-national parliaments mechanism to follow Europol’s activities’ (Council of the European Union, 2006a). An ‘options paper’ submitted to the JHA Council of 1-2 June 2006 by the Friends of the Presidency Group discussing the possibilities of future changes to the Europol Convention also mentioned that ‘[a] joint supervisory committee could be set up by the EP and national parliaments’ (Council of the European Union, 2006b). However, this proposal never made it into the Draft Council Decision (Council of the European Union, 2006c). Moreover, the issue was not salient during the negotiations.

At the beginning of the negotiations national parliaments seemed to be interested in establishing a forum where they could be involved in the scrutiny of Europol. In a letter sent to the Government in February 2007 at the initial stages of the scrutiny of the Draft Council Decision on Europol, the European Affairs Committee of the House of Lords assured that various national parliaments were 'pressing for the idea of a joint committee of members of national parliaments and the European Parliament' (House of Lords, 2007a). The Committee specially referred to the fact that a suggestion made by the Friends of the Presidency for a joint mechanism for following Europol's activities involving both national parliaments and EP was not included in the Draft Decision. The Committee asked the government its opinion and reminded it that the House of Lords also suggested this option in its 2003 Report on Europol's role in fighting crime (House of Lords, 2003:paragraph 69).

However, during the scrutiny of the Draft Council Decision national parliaments did not press for such a mechanism. For instance, after having expressed satisfactory views regarding the inclusion of national parliaments in the parliamentary control of Europol via a Joint Committee Meeting, the House of Lords asked the government not to 'press for the idea of a joint committee' (House of Lords, 2008a). If before interparliamentary cooperation did not flourish because it could hamper the development of the powers of the European Parliament, what can explain again the failure of this proposal in the context of the drafting of a new legal framework for Europol that increased substantially the powers of the EP? And moreover, how can we explain the national parliaments' sudden preference change?

According to the European Affairs Committee of the House of Lords, the reason for not pressing for a joint committee in 2006 was that the situation had changed since the idea had first been suggested in 2001 the number of national parliaments was limited. However in 2006, with a Union of 27 members such a committee would be 'almost unworkable' (House of Lords, 2008a). This may be an explanation but there are two other explanations.

First, in 2006 the Council decided to modify the legal basis of Europol by transforming the Europol Convention into a Council Decision. By doing that the Council had introduced new dimensions into the negotiation process, as, for instance, whether or not Europol should be financed from the EU budget. Hence, the focus of the discussion was not any more reduced to new ways of improving parliamentary scrutiny. The Council saw the change to the legal basis of Europol as a way of securing a new legal framework easily amendable. And the EP and the Commission were able to push for EP parliamentary control and for EU financing of the agency. Second, in a parallel process the negotiations leading to what later became the Lisbon Treaty started to deal with the general issue of the involvement of national parliaments in the EU, which of course would include the control of Europol once the agency became an EU agency. In that way the issue of the need to create a mechanism that would include national parliaments in the future parliamentary control of Europol was effectively removed from the negotiations and was dealt with separately as part of the institutional reform of the EU. In this case the need for ratification of the Treaty placed national parliaments in a better bargaining position.

The following paragraphs pay attention to the preferences of different actors, namely the Commission, the EP, the Council and the national parliaments in the context of the negotiations of a new legal framework for Europol. The preferences of the different actors could be understood as a continuum from less to more integrationist.

Table 4. Preferences of actors at the start of negotiations.

	+Integration 		
Preferences	National Parliaments	Council	EP/COM
Europol's Status	-	EU agency	EU agency
Parliamentary Control	National parliaments	National parliaments	European Parliament
Budget	National finance	National finance	EU finance

Table 4 shows the preferences of different actors at the start of the negotiations in 2006. National parliaments were closer to the *status quo* and the EP and the Commission were

in a more pro-integration position. The integrationist end of the spectrum implies that Europol should become an EU agency financed by the Community budget under the scrutiny of the EP. The non-integrationist position means that Europol continues to be an intergovernmental body. The Council of Ministers, meanwhile, adopted a more intermediate position. It is difficult to know the positions of each and every member of the Council due to the secrecy of Council negotiations. However, Council documents (for instance the Council of the European Union, 2006c) suggest that the main priority for the Council was to obtain a legal framework for Europol that would be easier to amend in the future than an international convention such as the Europol Convention. The Council agreed that this could be achieved by transforming Europol into an EU agency. Being an international convention any amendment to the Europol Convention needed the ratification of national parliaments. This will not be the case for any further amendments to Europol if a Council Decision regulates the agency.

As seen in Table 4 the initial main disagreements between actors were over whether or not Europol should be financed by the EU's general budget and whether or not there should be national parliamentary scrutiny. However, as explained before, the drafting of the Lisbon Treaty removed the controversy over the parliamentary control of Europol. This way EU financing remained as the main point of disagreement between the positions of different actors. Hence, discussions in the Council were centred on whether the financing of the agency should be changed and what the implications of this were.

Due to their loss of budgetary control, national parliaments showed initial resistance to EU financing, but ultimately the need to find a new legal basis for Europol was prioritised. In fact, the idea of establishing a legal framework for Europol that could easily be updated was not a trivial matter if one considers that it took an average of more than five years to ratify the Protocols to the Europol Convention adopted in 2000, 2002 and 2003. For instance, during the scrutiny of the Draft Council Decision on Europol the European Affairs Committee of the House of Commons expressed its concerns regarding the possibility of Europol being financed from the general budget of the EU. According to the Committee the new financial arrangements were 'potentially problematic' because with these arrangements the 'UK will lose much of its influence

over Europol's budget' (House of Commons, 2007). Although initially the issue was framed in terms of control by the end of the negotiations it was framed in economic terms, when the important issue became whether the UK contributions would increase if Europol were to be financed from the EU budget. In the end it turned out that financing Europol from the EU budget would reduce the UK's contribution. Therefore EU financing was accepted. This was also the case at the Committee of the House of Lords. At the beginning of the scrutiny, the Committee argued that funding Europol from the EU budget would give the EP the power to control further developments of Europol while the change from a Convention to a Council decision would take away the power national parliaments had through the ratification process (House of Lords, 2007a). However, the Committee issued a letter after the Council decided on the financing of Europol in June 2007 saying that it was glad that there would be 'Community financing of Europol' (House of Lords, 2007b).

Despite their potential power loss, there is no empirical evidence that could allow us to suggest national parliaments used the scrutiny of the Council Decision on Europol to resist the transformation of Europol into an EU agency. This is the case even though this transformation deprived them of their budgetary control power and their ratification powers. A possible explanation for national parliaments' acceptance of a reduction in their control powers is that the *status quo* was not in the end so satisfactory. The Europol Convention allowed national parliaments some control in their role as those responsible for the ratification of Europol's amendment Protocols. However, despite having a formal ratification role, national parliaments faced a situation in which approval was the only possible outcome because ratification happened after agreements at the level of the Council were already reached. On the other hand, the negotiation process of the Protocols was a long process considered inadequate for an agency like Europol dealing with criminality – hence the need to find a new legal basis for Europol. The only solution in this case was the transformation of the Europol Convention into a Council Decision. This implied accepting EU financing and therefore a role for the EP in the parliamentary scrutiny of Europol.

In this context, accepting a stronger position for the EP was mandatory as it was not possible to replace the Europol Convention by a Council Decision without providing for EU financing of Europol. At that point the negotiation changed its focus from the need to find a solution to the democratic control of Europol within the Europol Convention to a broader issue regarding the establishment of an EU agency. In a parallel process the issue of national parliaments' control was pushed away and dealt with separately in the context of the negotiations of the Lisbon Treaty.

Once Europol's new legal framework was in place, the EP's discourse regarding interparliamentary cooperation including for the control of Europol started to change. In its resolution of 25 November 2009 the EP asked the Commission to come forward with a legislative proposal outlining the involvement of the European Parliament and national parliaments in the evaluation of AFSJ policies and of the agencies involved at European level' (including Europol) (European Parliament, 2009e:pt.148). Although, the Council Decision did not include any provision for cooperation on the parliamentary control of Europol by increasing the powers of the EP, the Council Decision made possible that future parliamentary cooperation would not be seen any more as hampering the development of the EP. For this reason the replacement of the Europol Convention by the Council Decision on Europol should be taken as a necessary change for the future development of cooperation rather than as a missed opportunity.

The Parliamentary Control of Europol after Lisbon

Art.88 of the Lisbon Treaty provides for the involvement of national parliaments together with the European Parliament in the political monitoring of Europol. However, the Council Decision on Europol was adopted before the entry into force of the Lisbon Treaty and therefore under the rules of the previous EU Treaty. Moreover, provisions of the Lisbon Treaty has not yet been implemented as for that a regulation should be drafted and the Commission has not yet made a proposal and it only intends to present one in 2013 (European Commission, 2010). This means that the legal framework of Europol will need to be modified again in order to include the changes the legal provisions included in the Lisbon Treaty in particular those referring to the participation

of national parliaments and the European Parliament in the political monitoring of the agency (TFEU Art.88).

Due to this future modification, Europol's legal framework, the number of initiatives discussing the issue of the parliamentary control of Europol has increased. Particularly relevant are the meetings of COSAC, the Conference of European Affairs Committees and the Joint Committee and Interparliamentary Committee Meetings organised on the premises of the European Parliament in Brussels.

National parliaments seem to be keen on being involved on these activities. For instance, the House of Lords called the EP 'to adopt, in the spirit of the Lisbon Treaty, a formal procedure for the scrutiny of Europol's activities, and [...] to involve the national parliaments of the member states' (House of Lords, 2008:46). Several interparliamentary fora have dealt with the issue and the commission has organised several meetings with national parliaments (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010). The precise form in which national parliaments and the EP will take part in the scrutiny of Europol will be defined by a regulation subject to co-decision between the EP and the Council. The Conclusions of the COSAC 41st meeting give the impression that there will be a great deal of discussion regarding future relations between national parliaments and the EP in relation to their role in the control of Europol (COSAC, 2008).

Point 3.5 of these conclusions reads as follows:

3.5 COSAC reiterates the request of the XL COSAC in Paris, that the European Commission should seek the views of the national parliaments and the European Parliament via a consultation document before finalizing proposals for dealing with the parliamentary oversight of Europol and Eurojust. Furthermore, after the Commission issues these proposals, the Council and the European Parliament are requested to enter into dialogue with national parliaments giving them reasonable time to express their views, in the course of which they may in turn consult each other.

In this statement national parliaments make clear, through COSAC, that they want to be involved in the process of designing the future control mechanism for Europol. In the same vein in COSAC's 11th Biannual Report of May 2009 National parliaments affirmed their intention to take part in this task. However, none of the parliaments have

yet discussed the issue in detail. The House of Commons showed special interest in the need for national parliaments to be involved in the process that will draft the precise regulations that will define the relations between national parliaments and the EP in regards to the control of Europol. The conclusions of this report show that national parliaments 'share the conviction that democratic oversight of Europol and Eurojust is of primary importance and are therefore happy to carry it out' (Minutes from 41st COSAC Meeting in Prague, 11 - 12 May 2009).

The role COSAC and other Interparliamentary Committee Meetings could play in the scrutiny of Europol is subject to different opinions in different parliaments. Some parliaments consider COSAC as the interparliamentary forum where debates on the annual report of Europol could take place once or twice a year. This is the opinion for instance of the Danish, Irish, Lithuanian, Latvian Czech and Bulgarian parliaments (COSAC, 2009a:15). However, other parliaments consider that COSAC could serve as a forum for exchanging information about Europol as well as best practice related to the scrutiny of the agency but not necessarily the forum where Europol's annual reports are scrutinised. For example, the Italian parliament considers that the 'scrutiny of Europol's activities' should be part of COSAC's agenda on a regular basis (COSAC, 2009a:126). The opinion of the Dutch parliament in this regard is that COSAC could be a good forum for the exchange of information but nothing else. According to the Tweede Kamer, 'COSAC can be a platform for the exchange of information about the various positions of the national parliaments on Europol's and Eurojust's activities'. In the same vein, the Eerste Kamer sees COSAC as 'a forum for the exchange of best practice' (COSAC, 2009b:174). Similarly, the House of Commons sees COSAC as the place for national parliaments to 'consult each other' (House of Commons, 2008: pt. 55:16). Some parliaments just consider that COSAC is not the forum for the control of Europol's activities and prefer competent specialized committees to do this task. For instance according to the French Assemblée Nationale the EP could hold an Interparliamentary Committee Meeting on the monitoring of Europol or a joint committee composed of MPs and MEPs could be created for monitoring Europol (COSAC, 2009b:72). Despite the views of the French Senate a considerable number of parliaments prefer to build cooperation for the parliamentary control of Europol around

already existing forms of cooperation (COSAC, 2009a:13). This includes COSAC but also Joint Parliamentary and Committee meetings, which are considered as possible instruments to achieve an efficient cooperation between parliaments (European Commission, 2010). The opinion of the European Parliament regarding the role COSAC could play in this is that COSAC is ‘a forum of debate and exchange of best practice’ (COSAC, 2009a). The EP considers that the problem of COSAC scrutinising Europol is that of lack of expertise. Hence it considers that the scrutiny and evaluation of matters of Europol [...] should rather be left to the competent specialised committees (COSAC, 2009a).

Regardless of the forum chosen, interparliamentary control has some intrinsic problems. The House of Commons has dealt with the issue of national parliaments being involved in the control of Europol’s activities together with the European Parliament in its 33rd Report of 2007-08. In this report the committee points out some of the practical problems of parliamentary control being done simultaneously by both national parliaments and the EP. The committee points out that if that every chamber had one representative and the European Parliament had equal representation, there would be about 100 representatives at evaluation and scrutiny meetings (House of Commons, 2007:pt.5.4). The European Union Committee of the House of Lords expressed a similar view. The committee is against the idea of creating another chamber with representatives of the European Parliament and each Chamber of all national parliaments because it considers this option as ‘unmanageable’ (COSAC, 2009b:253). These are all issues that will need to be dealt with if, as it seems, the future parliamentary control of Europol will be dealt with in an interparliamentary forum.

Conclusion to Chapter 4

This chapter has traced the main important modifications on Europol’s legal framework over the years and it has provided an analysis as to how the evolution of parliamentary control of Europol can be explained. Three different periods in the history of the discussion of cooperation has been distinguished. They correspond with the modifications of Europol’s legal framework. The first period corresponds with the successive modifications of the Europol Convention. The Second period corresponds

with the early days of the discussions leading to the replacement of the Europol Convention by the Council Decision on Europol in 2006-07 and the inclusion of Europol into the EU. The third and last period goes from the time when the Lisbon Treaty entered into force in December 2009 until now.

The parliamentary control of Europol has been in the agenda of the discussions in every reform process of Europol's legal framework. However, it has never been included reforms. In the first stage the debate over the need to improve parliamentary control is introduced by some national parliaments that already at that stage had realised the difficulties of providing parliamentary control. However, this suggestion is interpreted as risking hampering the increase in the parliamentary control powers of the European Parliament. In the second period it is made evident that cooperation is a way to address weak parliamentary control but nonetheless a bigger role for the European Parliament in the parliamentary control of the agency is also needed. However during the negotiations of the Council Decision on Europol cooperation as a solution to the weak parliamentary control of Europol seems to lose its momentum, as energies focused on other substantial changes made to the Europol legal framework such as the budget and the attributions given to the European Parliament. The parliamentary control of Europol is left to be dealt with by the Treaty of Lisbon and Europol is brought into the EU before the adoption of the Lisbon Treaty. This means that the legal framework of Europol will need to be modified again in order to include the changes the legal provisions included in the Lisbon Treaty in particular those referring to the participation of national parliaments and the European Parliament in the scrutiny of the agency (TFEU Art.88). Cooperation between parliaments could improve parliamentary control in at least two ways. At one level, cooperation between national parliaments and the European Parliament can improve the 'little information available'²⁰ for national parliaments. For instance, relevant documents could be shared before the JHA Council of Ministers meeting. It is important to mention the relevant role the European Parliament could play here. Due to its position in the EU's political system and its permanent focus on scrutinizing EU policy the EP can provide both a more holistic vision of EU affairs

²⁰ In her intervention at the Interparliamentary conference on democratic control of Europol Andrea Loverdos MP (Greece) said: 'I agree with Mr Masson (MP France) because we have little information available at the national parliamentary level (Dutch Parliament, 2002: 22).

including issues regarding the development of Europol as well as detailed examinations of single policies. National parliaments, especially those with little resources and/or restricted constitutional provisions to monitor the Council would benefit from this information. At another level, national parliaments and the EP could establish coordinate policy positions with the aim of putting coordinate pressure on the JHA Council. As Mr. Van Oven puts it, 'when changes to the Europol Convention are made, national parliaments have the option of saying 'yes' or 'no' to those changes but this is a rather weak way of influencing the decision'. However if parliaments could organise a system to coordinate their efforts and co-ordinate their positions, then there would a chance to influence changes to, for instance, the Europol Convention (Dutch parliament, 2001:139).

Historically the establishment of interparliamentary structures for the parliamentary control of Europol found in the Treaties a brake against their development. For instance, the creation of a supervisory committee of MPs and MEPs for Europol was included in early versions of the Danish proposal to amend the Europol convention (the so-called Danish Protocol).²¹ However, the proposal was not included in the version upon which general agreement was reached in December 2002 because only primary European legislation (European treaties themselves) has the power to establish formal parliamentary committees of any kind. However, this problem does not exist anymore as the Lisbon Treaty includes provision for the establishment of control mechanisms on the part of the European Parliament and national parliaments. Moreover, the Lisbon Treaty also recognizes the right of the European Parliament and the national parliaments to 'jointly define the organization and promotion of efficient and regular interparliamentary cooperation' (TEU Art.9 Protocol No.1 on 'The role of national parliaments').

The shape and content of these procedures are still developing. In April 2010 the European Commission launched a consultation process involving all the institutional stakeholders. A first meeting took place in July 2010 and since then several fora have discussed the issue. The precise form in which national parliaments and the EP will take

²¹ Protocol drawn up on the basis of Article 43(1) of the Europol Convention amending that Convention (the 'Danish Protocol'), OJ C 002, 06.01.2004 p. 3.

part in the scrutiny of Europol will be defined by a regulation subject to co-decision between the EP and the Council (TFEU Art.88). In co-decision, the EP is the co-legislator together with the Council, and for this reason the EP is expected to have a high capacity to influence the outcome of the regulation. However, national parliaments seem to be interested on taking part in the process and they have already debated the issue (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010). If they want it, national parliaments could play an important role in defining the future of Europol. Under the Lisbon Treaty national parliaments have the right to be informed about legislative proposals and to state their opinions. This includes the regulation of Europol. However, there is little evidence that a single parliament on its own could do, not least because, for a proposal on the AFSJ to be revised, a quarter of the chambers of the EU would need to issue a negative opinion (TEU Art.12 Protocol No.2 on the Principle of Subsidiarity and Proportionality). For this reason if parliaments are willing to affect the future of the parliamentary control of Europol they may well opt to move forward cooperation in this field. The next chapter assess the practices that have developed so far.

CHAPTER 5

ASSESSING INTERPALIAMENTARY PRACTICES IN THE PARLIAMENTARY CONTROL OF EUROPOL

Introduction

The legal framework of Europol will soon be modified again in order to include the provisions of the Lisbon Treaty on the participation of national parliaments and the European Parliament in the political monitoring of the agency. The Commission intends to make a proposal for a new regulation on Europol including all changes on its parliamentary control by 2013 (European Commission, 2010). In light of these future changes, a number of initiatives have discussed the future parliamentary control of Europol and several interparliamentary practices have already taken place. Which type of interparliamentary activities has been developed? How effective have they been? And how are they likely to evolve? Who are the actors influencing them? These are the questions that this chapter seeks to answer. Particularly relevant are the networking initiatives; the meetings of COSAC – the Conference of European Affairs Committees – and the interparliamentary meetings between National Parliaments and the European Parliament. This following section analyses these interparliamentary initiatives in turn.

Relevance of the Discussions

Establishing a high benchmark for assessing interparliamentary practices of control brings the risk of concluding that no parliamentary control at all occurs. For this reason this study chooses an incremental approach. This means that this study looks for actions that imply more or less coordination. The minimum level is the sharing of information followed by the sharing of opinions. The sharing of information and opinions are actions that may or may not influence the actions of other parliaments. A further level on the cooperation scale, especially talking about parliamentary control, is the elaboration of parliamentary control strategies. This requires for parliaments to

previously have shared information and views but also a second level of engagement in which a shared strategy is discussed and agreed.

An indicator of the relevance of an issue is the fact that it is discussed at the plenary level of a parliament. In order to establish the relevance of the relations with national parliaments and the parliamentary control of Europol this research has looked at all plenary debates that have taken place at the European Parliament from 1999 to 2009. The Methods Chapter provided details of the databases and the search strings used.

As shown in Table 5, debates related to ‘Europol’, National parliaments’, ‘Parliamentary Cooperation’ and ‘COSAC’ are all discussed at the plenary meetings of the EP, which shows the attention paid to those issues – as they are not debated only at committee level. This is especially relevant in the case of the European Parliament as committee meetings in Brussels get very little attention compared with plenary sittings in Strasbourg. An initial general search by keywords gives the idea that the relevance of those topics is decreasing. From a number of 198 speeches having in the title the word ‘Europol’ between 1999 and 2004 we pass to 186 speeches between 2004 and 2009. A similar situation can be observed for the keywords including ‘parliamentary cooperation’ decreasing from 34 speeches between 1999 and 2004 to 29 between 2004 and 2009. Still the decrease is not so significant and considering the specificity of the topics discussed, the fact that speeches on the plenary meetings are done on these topics is already an indication of the importance given to those issues.

Table 5. Topics Mentioned at Plenary Meetings on the EP (General Search).

Keyword	1999-2004 Speeches found	2004-2009 Speeches found
Europol	198	186
National parliaments	416	396
Parliamentary Cooperation	34	29
COSAC	7	11

A subsequent search has been carried out in order to refine the results in an attempt to better capture what the relevant issues discussed are. For this second search I searched for a combination of keywords. The following strings have been used:

- European Parliament AND Europol
- National parliaments AND Europol
- European Parliament AND cooperation AND COSAC AND Europol
- National parliaments AND cooperation AND COSAC AND Europol

The aim of this refined search (Table 6) is to capture the number of debates dealing with ‘European Parliament’ and ‘Europol’ on the one hand and ‘National parliaments’ and ‘Europol’ on the other hand, as compared to the total number of debates dealing with Europol. Similar comparison is done for the issue of COSAC. A further level of comparison was carried out adding the words ‘cooperation’ and ‘Europol’. This way it is possible to compare the number of debates containing the words ‘European Parliament and COSAC’ in the title with those containing also the words ‘cooperation’ and ‘Europol’. The existence of such debates indicates that the issues related to Europol and COSAC are discussed in the same debate. A similar search was done in the case of debates containing the keywords ‘national parliaments’.

Table 6. Topics Mentioned at Plenary Meetings on the EP (Refined Search).

Keyword	1999-2004	2004-2009
	Speeches found Total	Speeches found Total
European Parliament AND Europol	188	172
National parliaments AND Europol	74	64
European Parliament AND cooperation AND COSAC AND Europol	1	3
National parliaments AND cooperation AND COSAC AND Europol	1	2

As shown in Table 6 debates referring ‘Europol AND National parliaments’ and to ‘Europol AND European Parliament’ are present at the EP plenary settings between 1999 and 2009. A total number of 188 debates had in the title the words ‘European Parliament AND Europol’. Considering that for the same period the number of debates on Europol were 198 as shown in Table 5, this represents a 95% of all the debates on Europol during the same period. This percentage is higher than the one that could be observed for the period 2004-2009. Between 2004 and 2009 the total number of debates dealing with Europol was 186 and of those 172 included the words ‘European

Parliament' in its title (92%). These high percentages are normal if we consider that the debates are taking place at the European Parliament. Although the differences between periods are little they may reflect the fact that in the early days of Europol, as intergovernmental organ in the fringes of the EU, the European Parliament was excluded from parliamentary control, which prompted lively debates about the need to reform the parliamentary control of Europol. By 2006, with the decision of the Council to transform Europol into an agency of the EU, the EP is assured of the future increase in its parliamentary control, which may explain a decrease in the number of such debates.

Regarding the debates on 'Europol AND national parliaments', we observe the following situation: a total of 74 debates between 1999 and 2004 and a total of 64 debates between 2004 and 2009 had those keywords in the title. These represent 30% and 16% of the total number of speeches on Europol for the period between 1999-2004 and 2004-2009 respectively. As is the case with speeches referring to the European Parliament we can see a difference between the periods, but in this case it is more relevant. This means that the issue of national parliaments and Europol was significantly less discussed at the European Parliament's plenary between 2004 and 2009. These data are not enough to argue why this happened, but they clearly show that once the decision of transforming Europol into an EU agency was taken in 2006, the relevance of the discussions decreased.

Comparing Tables 5 and 6 we see that of the total number of debates on COSAC, 27% (3 out of 11) dealt also with the issues of 'Europol', 'cooperation' and 'European Parliament' in the period between 2004 and 2009. This percentage is reduced to 14% (1 out of 7) for the period between 1999 and 2004. This situation is also observed in the case of speeches dealing with 'Europol', 'cooperation' and 'national parliaments'. In this case we find that of all the speeches on COSAC, 18% (2 out of 11) dealt also with the issues of 'Europol', 'cooperation' and 'national parliaments' during 2004-2009 and 14% (1 out of 7) during 1999-2004. It is remarkable that a considerable percentage of speeches dealing with COSAC included issues related to Europol and cooperation. This is relevant because for years COSAC has been the leading forum for interparliamentary

cooperation. Hence, cooperation for the parliamentary control of Europol could be established around this forum. However there are other fora such as those organised on the premises of the European Parliament, particularly the meetings that the LIBE Committee has with correspondent committees from national parliaments. Moreover it shows that the issue is been discussed also at plenary meetings in the EP.

Interparliamentary EU Information Exchange (IPEX)

Created in 2004, IPEX is ‘a platform for the electronic exchange of EU-related information between parliaments in the Union’ (IPEX Website: www.ipex.eu). This platform allows national parliaments to publish and share with other parliaments any relevant documents. Documents are stored in a database and parliaments can also add comments or flag the documents considered particularly important.

Although this research has analysed the use of IPEX in general, four parliaments have been studied in more detail. These are the parliaments of Spain, The Netherlands, Italy, and The United Kingdom.

The volume of documents uploaded in IPEX since its creation is similar for all the parliaments of the EU. However, there are some differences in the issues these documents deal with and in the type of information shared. Table 7 shows the documents uploaded by the selected parliaments on issues related to the AFSJ and to Europol (data collected from www.ipex.eu on 21 January 2010).

Table 7. Number of documents shared in IPEX by chamber and by topic.

	Spain	United Kingdom	The Netherlands	Italy
Documents related to the scrutiny of AFSJ	7	63	13	36
Documents dealing with Europol	0	1	1	0

As shown in Table 7, the Spanish parliament shared a very small number of documents. With 63 documents shared, the United Kingdom appears as the chamber sharing the

biggest number of documents of the parliaments selected. While this could be an indicator of this parliament's commitment to cooperation we should also bear in mind that other parliaments may be willing to share information but that they simply do not produce so many documents during their scrutiny. If we turn into the specific use of IPEX for the sharing of information related to legislation affecting Europol, of the parliaments selected only the parliaments of the United Kingdom and the Netherlands have uploaded documents related to this issue. In both cases these documents are the reports of the scrutiny they have done of the Council Decision on Europol.

Advanced searches for the 'Europol' keyword in the title within the IPEX database for all chambers returns two entries referring to legislation related to Europol that has been scrutinised by national parliaments.

1. Proposal for a COUNCIL DECISION on requesting comparisons with EURODAC data by member states' law enforcement authorities and Europol for law enforcement purposes
2. Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EC) No [.../...] [establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person] (Recast version)

The aim of these two proposals was to fulfil the conclusions of the Mixed Committee of the JHA Council of 12-13 June 2007 by granting access to EURODAC²² to member states' police and law enforcement authorities, as well as Europol. For these two proposals we can observe the following situation:

For both Houses of the British parliament the bill appears as 'scrutiny in progress'. And for both the Senate and the Chamber of Deputies of the Italian parliament it appears as 'no information has been uploaded'. A similar situation can be observed for the Spanish parliament and both chambers of the Dutch parliament. Only the Senate of the Czech Republic and the Bundesrat appear as having completed the scrutiny in the case of the first proposal. In the case of the second proposal none of the chambers have completed the scrutiny. It is also important to notice that none of the Chambers has affixed to

²² EURODAC, which stands for European Dactyloscopy, is the European fingerprint database for identifying asylum seekers and irregular border-crossers.

either of these matters the marker ‘There are specific issues concerning the principle of proportionality and/or subsidiarity’ or the marker ‘There is important information to exchange’. This means that parliaments did not consider the need to share information regarding the scrutiny of the proposals. However, none of these entries refers to documents related to the legal acts I have identified as having affected the evolution of Europol over the year (please refer to Chapter 4 for a list of those acts and for a discussion on their importance).

These poor results have to do with two factors. First IPEX only contains documents from 2004 onwards. Second, the IPEX database is built around the idea that documents uploaded should be linked to legislative acts and it is difficult to obtain accurate results when searching for keywords. More accurate results are obtained when one establishes first which legal acts referring to Europol one wants to follow in order to see exactly what every parliament has uploaded for each of these legal acts. When done this way, the conclusion is that documents relating to the scrutiny done in national parliaments regarding legislative acts referring to Europol are indeed shared in IPEX.

The most important modification of the Europol legal framework was the replacement of the Europol Convention by a Council Decision. Among other things, this new legal framework changed the parliamentary control of the agency giving the EP a role as budgetary authority and it also changed the status of the agency that went from being an intergovernmental agency financed from the member states to being an agency of the EU financed from the EU budget. For these reasons I decided to focus on the information national parliaments shared on IPEX regarding the scrutiny of that bill.

18 out of the 40 national chambers of the EU have shared their scrutiny on the replacement of the Europol Convention by a Council Decision. Just to mention some examples, the House of Commons uploaded all the reports it had written on the issue in which it explained the main issues at stake, as well as information provided by the government regarding the course of the negotiations in the Council. The House of Lords also shared some of the correspondence it had with the Minister responsible for JHA during scrutiny of the Council Decision. And the Dutch parliament provided a link to

the dossier it had elaborated on this issue. The fact that this information is shared is important because it provides other parliaments with accurate information about which issues require special attention. Parliaments can choose to simply share the information but they can also flag out important issues. I was interested on whether in this case parliaments had shared information or important points were suggested by different parliaments. This is important because according to parliamentary officials this increases the use of IPEX in capitals²³ in other parliaments (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010). This is also a sign of proposals being more important for parliaments and/or with issue for scrutiny more controversial. In this case, only the Dutch Eerste Kamer put the tag ‘there is important information to share’ and they provided a link to a page on the Dutch parliament’s website. In this page there were links to every parliamentary session in which the Council Decision on Europol was discussed at the Dutch parliament. In the same page the Dutch parliament also provided access to the correspondence that the Dutch Senate had with French Senator Mr. Haenel regarding the parliamentary control of Europol. This shows a high level of information sharing. However, this is only a single example. The rest of parliaments have not shared information at this level.

In order to measure the effects that the information shared on IPEX has had on the scrutiny work done in other parliaments this research looked for references to the information shared on IPEX in the reports issues by and the debates held in other parliaments. In this context, we can distinguish between a quantitative and a qualitative use of IPEX. A quantitative use of IPEX would imply that in a debate or a report one parliament recalls information in IPEX regarding the fact that another parliament or a number of them have taken some action regarding the scrutiny of a measure. However, in this case no information or detail is given in order to explain the reasons behind that action. A qualitative use of IPEX however, implies that information retrieved from IPEX would be given in order to provide an explanation for the motivation of the scrutiny action of some other parliament. My research could hardly find any of these two uses of IPEX as most of the references made to IPEX in debates or reports are done

²³ It is important to distinguish the use of IPEX in capitals from the use of IPEX representatives of national parliaments in Brussels. Representatives in Brussels are more likely to use it because of the nature of their work.

in order to explain what IPEX is or to report to the chamber on discussions that took place in COSAC regarding the setting up of IPEX. Therefore it is difficult to assess the effect of the information shared in IPEX because references in parliamentary debates or reports to information retrieved from IPEX are not common.

This research has found a number of references to IPEX in committee meetings and debates but none of them refers specifically to Europol. Most of the references mention the perception that parliaments have of IPEX. Only in a debate at the European Affairs Committee of the Italian Chamber of Deputies I have found the use of IPEX as a source of data. In this case, the rapporteur and another MP are quoted saying that according to data from IPEX other parliaments were scrutinising a particular piece of legislation that the Italian Chamber was also dealing with (European Affairs Committee, 13 November 2008). This is what I call a quantitative use of IPEX because it is different to say that other parliaments are scrutinising a particular measure than to actually mention what the content of that scrutiny is, or to suggest which issues other parliaments have considered as particularly important.

The general impression from the analysis of the debates and reports is that IPEX is regarded as a useful tool and that MPs seem to be keen to use it. The European Affairs Committee of the Spanish parliament referred to IPEX as a useful tool for parliaments in a report dealing with the principle of subsidiarity and the role of national parliaments (Cortes Generales, 2007). In the same vein Italian senator Mr. Andrea Manzella mentioned that the administration of the Italian Senate was making an effort to use IPEX and signalled as a virtue of the system that it allows parliaments to ‘follow in real time parliamentary activities in other parliaments’ (Italian parliament, 2007). And at a debate in the House of Lords (27 October 2006) Lord Grenfell mentioned the intention of the House to make ‘full use’ of IPEX. However, IPEX is not as much used as might be expected from these reports. Interviews with representatives of national parliaments suggest mainly that only those permanently working on the scrutiny of EU affairs use IPEX. And that it is ‘very difficult to make national parliamentarians make use of it’ (personal interview with Ms. Libby Kurien, Representative UK House of Commons in Brussels, October 2010). In any case, when the COSAC Secretariat asked national

parliaments about their use of IPEX most chambers recognised the usefulness of IPEX for sharing information (COSAC, 2010b). However some parliaments like the Finish parliament are not convinced that IPEX is ‘the right tool for quick information exchange’ For the Finish parliament IPEX is a ‘database, not an information tool’. For this reason in the views of this parliament other means such as e-mail could be more useful for the exchange of information (COSAC, 2010b:136).

COSAC

The evolution of COSAC is interesting. COSAC was originally intended as a forum of the Committees on EU Affairs of the national parliaments. However, the Danish parliament proposed in 2002 that COSAC should be a place for debating not only the main general issues regarding the Union, but also sectoral policies (Danish Parliament, 2001). For this purpose it proposed that COSAC should have a ‘variable composition’ (Danish Parliament, 2001), with members drawn not only from European Affairs Committees but also from sectoral committees according to the issues discussed. The analysis of the composition of the delegations to the recent COSAC meeting of October 2009, where many members belonged to the Security and Justice committees, shows that the variable composition of COSAC is already a reality.

In 2003, COSAC changed its rules of procedure in order to be able to adopt contributions voted under majority rule, giving COSAC the possibility to articulate views and formulate opinions. Changes in its voting procedure gave COSAC the potential to become a political forum. Also, Protocol No.1 of the Lisbon Treaty, which amends the provisions on COSAC, gives COSAC’s role an official function with regard to the exchange of information and good practice between parliaments and extends that role to ‘specialized committees’. The Protocol also provides for COSAC to ‘organise interparliamentary conferences on specific topics’ (TEU Art.10 Protocol No.1). This modification in the COSAC Protocol opens the door for specific interparliamentary cooperation between sectoral committees of Justice and Home Affairs to cooperate through COSAC. In these meetings the parliamentary control of Europol could be part of the agenda. This idea is not new. It was already discussed in 2001 during the Convention on the Future of Europe, the body established by the European council with

the mandate of producing a draft constitution for the EU. These are significant improvements. On the one hand, the exchange of information at the level of specialized committees helps to reduce the lack of expertise, which has been one of the major problems of inter-parliamentary cooperation. On the other hand, the possibility of direct contributions to the European institutions is also a significant improvement because this way the discussions that would take place in COSAC could end up in something concrete such as an opinion that could be sent to the Commission or the Council.

However, even though formally the Treaty seems to provide COSAC with the necessary tools to become an important forum for scrutiny, including that related to the parliamentary control of Europol, not every parliament sympathises with this option. Moreover, some national parliaments, including the EP, do not seem to be convinced of the reasons why COSAC should stop being a forum for the mere exchange of best practice to become an active forum for the scrutiny of EU policies. For instance the Estonian Riigikogu, the French Assemblée Nationale and the Polish Sejm and Senat support the idea of adding the topic of political monitoring of Europol as a recurrent issue on the COSAC agenda. But several national parliaments/Chambers such as the German Bundestag, the Dutch Tweede Kamer, the Spanish Cortes Generales, the Swedish Riksdag and the European Parliament do not favour the idea of holding regular debates on Europol in the framework of COSAC (COSAC, 2010c:41). Given the hesitance of some parliaments regarding COSAC the meetings of sectoral committees whether jointly organised or not is another experience with great potential especially given the current tendency to focus interparliamentary cooperation on specific areas. In these meetings homologous specialized committees meet to discuss on a particular policy area.

Debates during the Convention were greatly influenced by the idea that the closer inclusion of national parliaments in the EU could solve part of the EU's democratic deficit. In the Final report of Working Group IV on the role of national parliaments 'members agreed that national parliaments had a distinct role to play within the EU, that enhancing their involvement would help to strengthen the democratic legitimacy of the Union and bring it closer to the citizens' (The Secretariat of the European Convention,

2002:2). The Convention also mentioned the role of parliamentary cooperation as a possible solution for better parliamentary control. Concretely, the Final report of Working Group IV on the role of national parliaments agreed that ‘a more systematic exchange of information between national parliaments about methods and experiences could play an essential role in increasing knowledge and awareness of European affairs and thus improve further the efficiency of national parliamentary scrutiny’ (The Secretariat of the European Convention, 2002:5). The report also signalled the important role COSAC could play in this process (The Secretariat of the European Convention, 2002:5).

The Convention also discussed the issue of parliamentary control of Europol. An analysis of the debates that took place during the Convention shows that a number of speakers criticised the lack or the inadequacy of controls over bodies such as for example Europol (some also mentioned Eurojust) and demanded controls at European level. A majority of the delegates agreed with the need to increase Europol’s funding and potential powers. Strengthening Europol in this way should go hand in hand with increased parliamentary and judicial control (European Convention, Plenary Session 6-7 June 2002 Debate AFSJ: the role of the Union and of member states). Some convention members submitted various proposals along these lines, in particular the setting up of joint control of Europol by the European Parliament and national parliaments, in the form of a joint committee (European Convention, Plenary Session 3-4 April 2003 Debate on draft articles on the AFSJ). These suggestions are in line with the recommendations made in the Final report of the Convention Working Group X ‘Freedom, Security and Justice’ (The Secretariat of the European Convention, 2002:22-3).

There have been no mini-COSAC or specialised COSAC meetings but the parliamentary control of Europol has been part of the agenda of the last four COSAC meetings. COSAC’s 40th meeting (November 2008) dealt with the issue of Europol control and the involvement of national parliaments in it. In the conclusions to the meeting, COSAC recalled ‘the role of national parliaments in scrutinizing police activities’ and affirmed ‘the necessity to submit cooperation in these fields for scrutiny

by the EP, in association with national parliaments' (40th COSAC Meeting in Paris, 2-4 November 2008). Contributions to COSAC's 41st meeting (May 2009) also stressed that oversight of Europol can only be carried out by national parliaments and the EP together and mentioned that COSAC had agreed to use the existing interparliamentary forms of cooperation for this purpose (COSAC, 2009e). Of course this includes COSAC, but it also shows an unwillingness to mention COSAC as the principal forum for that purpose.

The next paragraphs analyze the type of interparliamentary cooperation that has taken place in COSAC with the aim of establishing to what extent parliamentary scrutiny occurs in COSAC with special focus on the parliamentary control of Europol.

In order to establish the relevance of COSAC as a forum for parliamentary cooperation this research looks at the level of participation and the level of attendance to this forum. Attendance at COSAC meetings is high. Except for some rare exceptions²⁴ COSAC meetings are well attended. Every parliament sends a delegation to COSAC meetings. Currently delegations sent to COSAC are all composed of six members (excluding officials). For this reason the size of the delegations does not vary a lot. However it is interesting to see that the number of officials in each delegation differs.

The following table shows the size of the delegations including administrative staff for four different parliaments plus the European Parliament. As in the case of IEPX the national parliaments chosen are those of Spain, The Netherlands, United Kingdom and Italy.

²⁴ No Spanish delegation was present on the 1989 COSAC meeting in Paris

Table 8. Size of COSAC delegations including administrative staff.^{♦*}

	1989	1990		1991		1992		1993		1994		1995	
<i>Spain</i>	0	4(1)	3(1)	4(1)	2(0)	4(1)	3(-)	1(1)	4(1)	3(-)	3(-)*	6(1)	5(-)
<i>The Netherlands</i>	8(2)	6(1)	4(2)	8(2)	13(5)	8(2)	6(-)	8(1)	7(2)	6(-)	3(-)*	8(2)	2(-)
<i>United Kingdom</i>	5(2)	3(1)	4(2)	6(2)	5(1)	8(3)	2(-)	8(2)	8(2)	6(-)	4(-)*	8(2)	6(-)
<i>Italy</i>	9(3)	6(3)	4(2)	8(3)	9(3)	9(3)	4(-)	9(3)	9(3)	0(-)	2(-)*	6(3)	6(-)
<i>EP</i>	2(1)	10 ²⁵ (2)	5(2)	15(12)	13(6)	16(9)	6(-)	11(7)	11(5)	3(-)	5(-)*	16(10)	6(-)

	1996		1997+*		1998		1999		2000		2001	
<i>Spain</i>	5(1)	5(1)	5(1)	1(0)+	6(-)	3(-)*	8(2)	5(1)	1(-)*	8(2)	6(2)	5(2)
<i>The Netherlands</i>	5(1)	7(2)	14(4)	3(2)+	3(-)	4(-)*	7(2)	8(2)	3(-)*	8(2)	7(2)	5(2)
<i>United Kingdom</i>	6(-)	9(3)	6(3)	4(2)+	6(-)	2(-)*	7(2)	9(3)	3(-)*	9(3)	6(3)	10(4)
<i>Italy</i>	6(-)	9(3)	9(3)	4(2)+	6(-)	3(-)*	8(2)	10(4)	2(-)*	9(3)	7(4)	10(4)
<i>EP</i>	6(-)	11(8)	11(6)	4(2)+	6(-)	4(-)*	15(9)	15(5)	4(-)*	16(11)	13(8)	14(8)

	2002		2003		2004		2005	
<i>Spain</i>	7(3)	8(2)	5(1)	4(1)	6(1)	3(2)	7(2)	2(1)
<i>The Netherlands</i>	7(2)	4(1)	5(2)	6(1)	9(3)	8(3)	6(0)	6(3)
<i>United Kingdom</i>	9(3)	9(3)	6(2)	8(2)	9(4)	8(4)	10(4)	6(4)
<i>Italy</i>	9(3)	11(5)	7(3)	10(4)	14(8)	11(5)	11(5)	11(6)
<i>EP</i>	16(10)	11(8)	11(6)	15(9)	14(9)	15(9)	14(9)	12(8)

	2006		2007		2008		2009	
<i>Spain</i>	7(2)	8(2)	7(2)	7(2)	0	8(2)	7(2)	8(2)
<i>The Netherlands</i>	6(2)	6(2)	8(2)	7(2)	6(2)	8(2)	7(2)	5(2)
<i>United Kingdom</i>	9(3)	9(4)	11(5)	10(4)	10(4)	10(4)	10(4)	10(2)
<i>Italy</i>	6(4)	11(5)	10(5)	12(6)	6(5)	10(4)	12(6)	13(6)
<i>EP</i>	13(7)	15(10)	14(8)	15(9)	12(8)	14(8)	11(5)	16(10)

The size of delegations sent to COSAC reveals that parliaments are putting a significant level of human resources into cooperation. As Figures 1 to 5 show Spanish delegations tend to be the smallest from the parliaments studied with the lowest number of administrative assistants. This is not surprising given the limited resources that this country used to invest in parliamentary cooperation. However, things have started to

♦ The number outside brackets represents the totals size of the delegation and the number in brackets represents the number of administrative staff.

* Data taken from records of interventions in absence of a list of participants

- No data available

²⁵ 5 of these 8 members were observes

+ Data of Chairmen Conference instead of COSAC ordinary meeting

change. On 29 March 2009 the Spanish parliament decided to participate in the subsidiarity control tests carried out within COSAC. And since the last Spanish presidency (January 2010) the parliament has had a representative office in Brussels. These two decisions reflect a commitment of the Spanish parliament to a more active participation in the EU (personal interview with Ms. Carmen Sánchez-Abarca Gornals, Representative of the Spanish parliament, October 2010). The permanent presence of a representative in Brussels offers the Spanish parliament and its European Affairs Committee a permanent source of information thereby breaking the informational asymmetry that had previously existed between the parliament and government. Also due to the existence of this office is to be hoped that the interest and participation in parliamentary cooperation would increase as the presence of a representative of the parliament in Brussels multiplies the opportunities for networking and collaboration with the various parliaments (Ruiz de Garibay, 2010). On the contrary the Italian parliament puts many resources into cooperation. Italian delegations are amongst the ones with a higher number of assistants. However the EP prevails: it has the biggest number of assistants.

Figure 1. Size of COSAC delegations across parliaments [1989 - 1992].

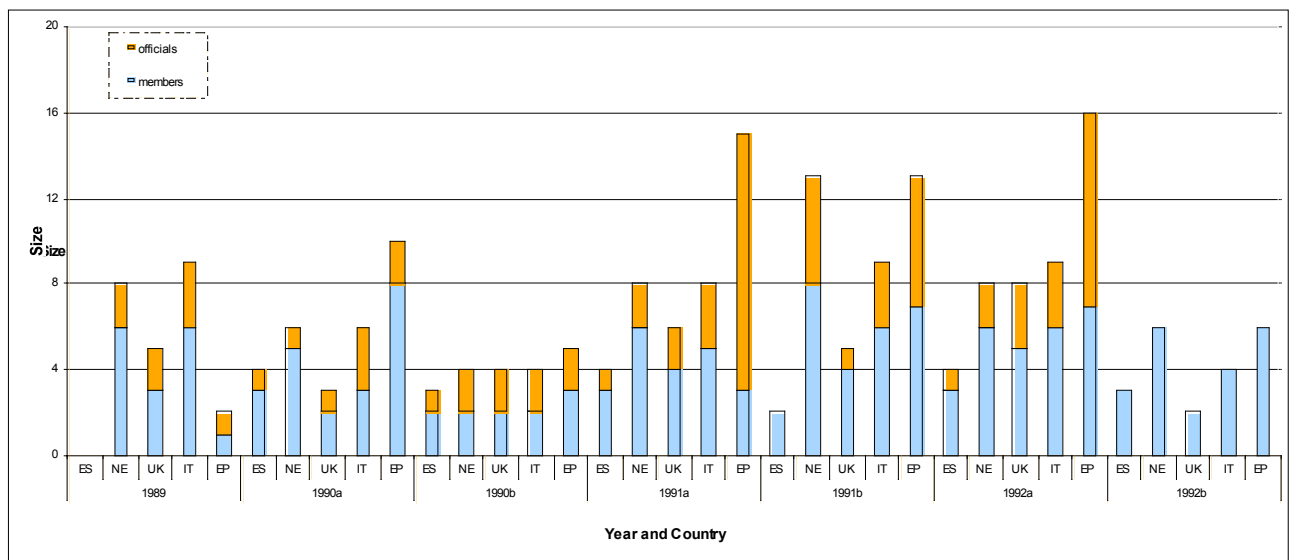


Figure 2. Size of COSAC delegations across parliaments [1993 - 1996].

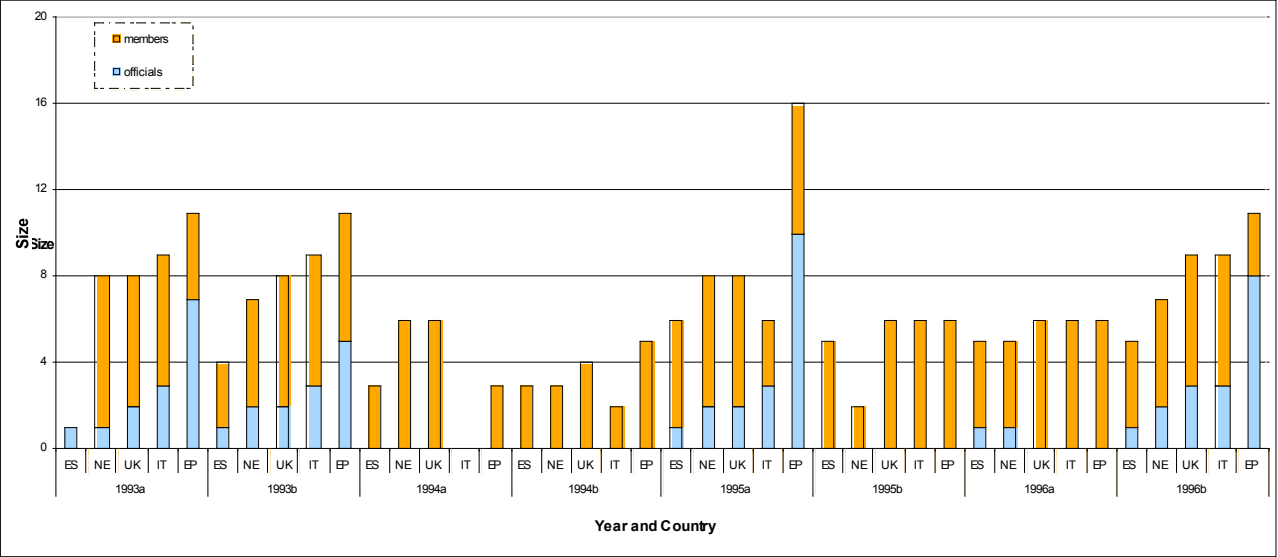


Figure 3. Size of COSAC delegations across parliaments [1997 - 2000].

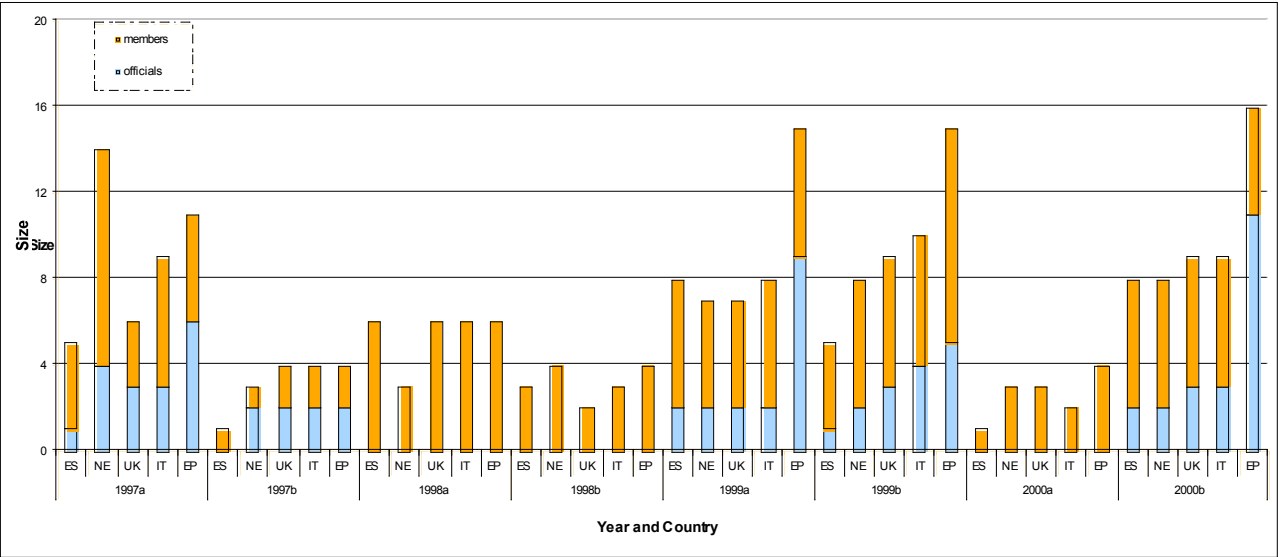


Figure 4. Size of COSAC delegations across parliaments [2001 - 2004].

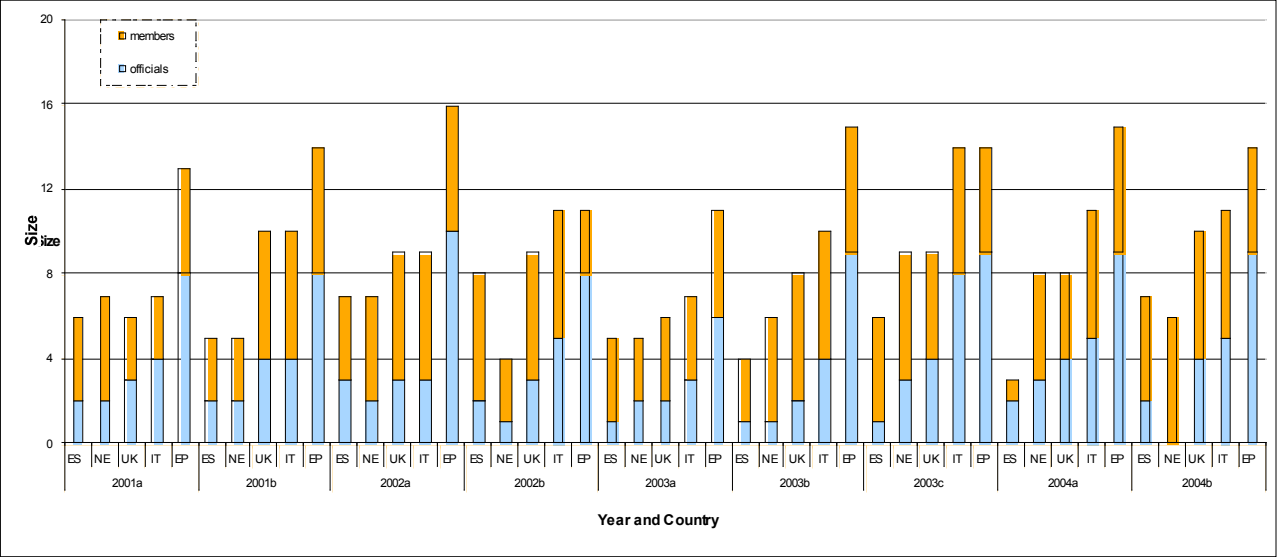


Figure 5. Size of COSAC delegations across parliaments [2005 - 2009].

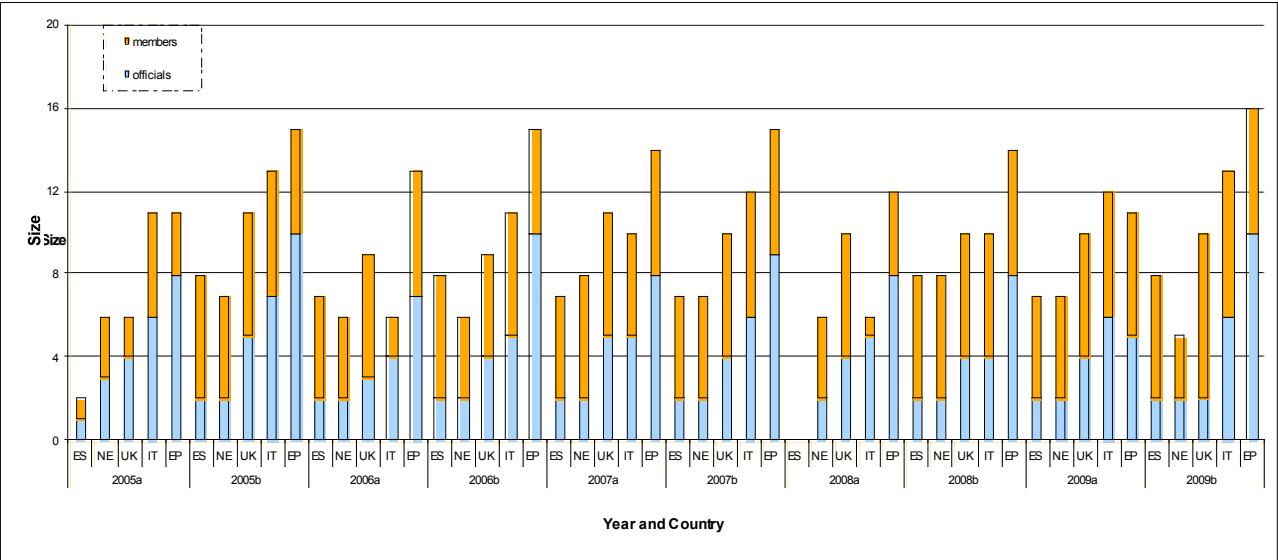
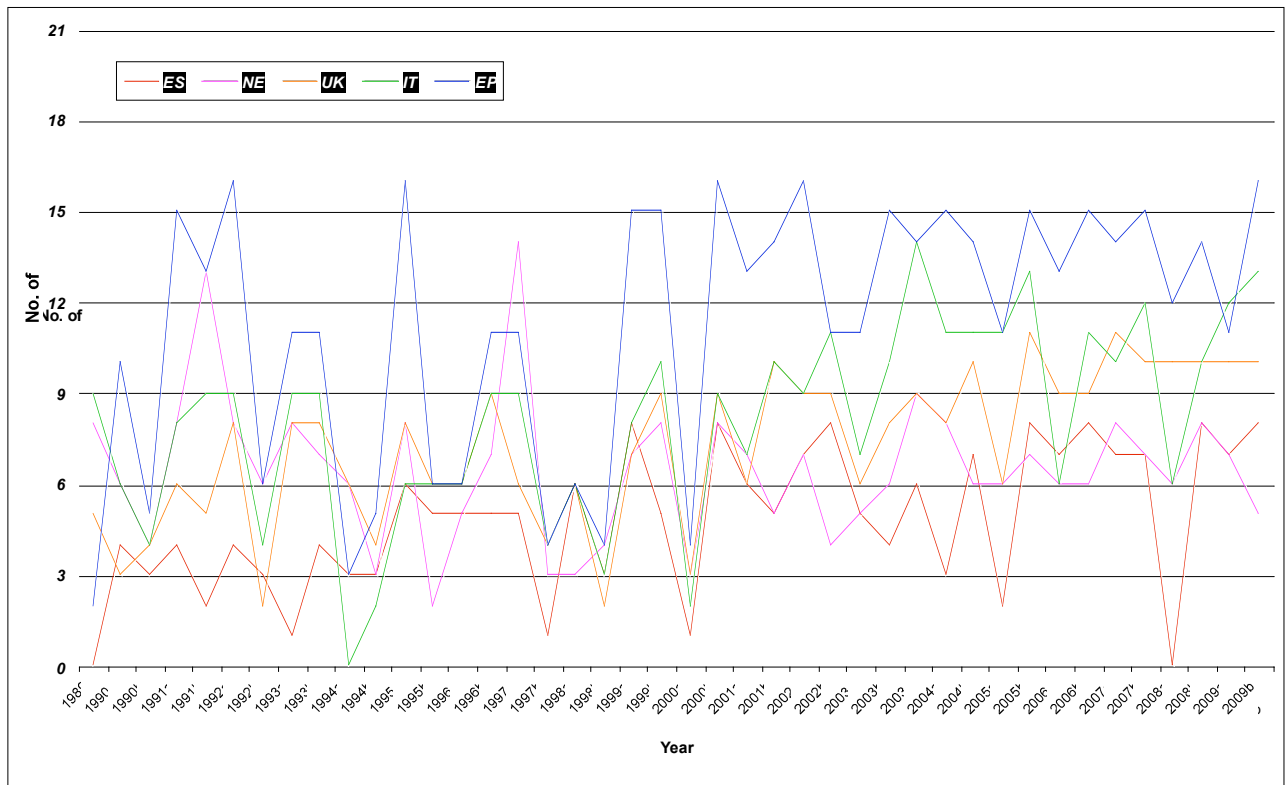


Figure 6. Size of COSAC delegations across time for the UK, Italian, Spanish, Dutch and European Parliaments [1989 - 2009].



Even if those parliaments studied have a different approach to cooperation, the graph illustrates a converging pattern towards an increase in the number of people involved in cooperation through COSAC throughout time. Even if those parliaments studied have a different approach to cooperation, the graph illustrates a converging pattern towards an increase in the number of people involved in cooperation through COSAC throughout time. Also, levels of human resources for each meeting increase and decrease simultaneously in all parliaments. An explanation for this may be that the importance of the agenda and the matters discussed during the meetings, may affect the increase or decrease of the human resources employed. However, no evidence has been found to prove this.

As speaking time is regulated, every delegation uses almost the same time. For this reason speaking time in COSAC is not a good indicator of parliaments commitment. Another possibility is the participation of parliaments in COSAC's working groups. These working groups are not part of the plenary meetings of COSAC and therefore they are less regulated. However, there have been only two working groups organised between 2001 and 2006: the Working Group concerning Co-Financing the Permanent Member of the COSAC Secretariat (35th COSAC Meeting in Vienna, 22-23 May 2006), and Working Group on the question of national parliaments and the European Union (42nd COSAC Meeting in Stockholm, 5 - 6 October 2009). Almost every parliament took part in most of the sessions. Perhaps the Spanish delegation is the one exception, as it did not take part in one of the discussions on the financing of the COSAC Secretariat. However this variation is not enough to make any judgment. Nonetheless it is still possible to measure parliaments' commitment to COSAC by observing the communications they have sent to COSAC. These communications not only vary in number from parliament to parliament but they also vary in terms of the issues they deal with. Moreover, parliaments are free not to send communications and therefore the fact that communications are sent is a sign of a level of involvement that could have easily been avoided. None of the communications sent deal with Europol.

Some parliaments as is the case of the Spanish parliament did not send any communication to COSAC between 2000 and 2009. Other parliaments however have sent an average of at least one communication a year in the same period. For instance the Italian parliament sent eight communications to COSAC. A similar number of communications was sent by the Dutch parliament. Communications deal with several different issues. But the issues attracting the most interest of national parliaments were the future possibilities of scrutiny provided by the Lisbon Treaty, which includes Europol, and the establishment and finance of the COSAC Secretariat.

Another way to measure parliaments' commitment is by looking at COSAC's biannual report. The last four biannual reports have dealt with this issue (COSAC 2009a, 2009c, 2010a, 2010c). In 2009, in preparation for its 41st meeting, the COSAC Secretariat compiled a report on the scrutiny of Europol based on a questionnaire sent out to all EU

parliaments. Every parliament explained how it scrutinises Europol's activities and what future developments would take place in light of the entry into force of the Lisbon Treaty. The sharing of this information is already some form of cooperation although maybe it does not amount to much. But it is interesting to note that both Houses of the UK parliament took the opportunity to share with other parliaments their analysis of the situation and to outline a framework for possible future arrangement including questions to be considered (COSAC, 2009a:12). Other parliaments also took the opportunity to express their views as regards to which type of fora they would and would not consider for future cooperation related to the parliamentary control of Europol (COSAC, 2009a). Similarly for the preparation of its 13th and 14th Biannual reports the COSAC Secretariat surveyed the opinion of parliaments regarding how the future political monitoring of Europol could be organised and what the role of different parliamentary fora could be in that (COSAC 2010a, 2010b). Even if not specifically on Europol, COSAC's 11th report exchanged parliament's experience regarding Interparliamentary Committee Meetings as means of direct exchange of experience among members for improving scrutiny in general in the area of Justice and Home Affairs, which most parliaments considered to be a very useful tool (COSAC, 2009c).

Practical issues regarding parliamentary cooperation between parliaments were discussed at an interparliamentary committee meeting between the LIBE Committee and corresponding committees in national parliaments in January 2009. This meeting dealt with the issue of 'how to reinforce cooperation between national parliaments and the EP on specific issues linked to the AFSJ' and how 'to strengthen the direct dialogue between the European and national parliaments'. Moreover, the concluding part of the meeting had the following title: Perspectives of an Interparliamentary Working Area. This debate concluded with the adoption of the EP's resolution on the AFSJ in March 2009, which noted 'the support given by national parliaments to wider interparliamentary cooperation notably in the AFSJ' (European Parliament, 2009a). This of course includes the parliamentary control of Europol. But the resolution did not mention it explicitly. However some changes are taking place. In November 2009 under the title 'Building a Citizen's Europe' a Joint Parliamentary Meeting took place at the EP in Brussels. A Commission official confirmed that this meeting served as a 'sort of

initial discussion held at the LIBE Committee of the European Parliament’ (personal exchange of e-mails with Mr. Joaquim Nunes de Almeida, Head of Unit European Commission Directorate General Justice, Freedom and Security, November 2009). This meeting discussed the role of national parliaments and the EP in the control of Europol. In this meeting the EP welcomed the fact that new provisions of the Lisbon Treaty regarding the oversight of Europol and the evaluation of Eurojust by the national parliaments and the EP had been ‘welcomed as a major success at the 41st COSAC meeting held in Prague in May 2009’ (European Parliament, 2009c). The president of the EP affirmed that cooperation between EU parliaments was at a key moment because for the first time the EU Treaty gave national parliaments an active role at EU level (European Parliament, 2009c).

Interparliamentary Committee Meetings between National Parliaments and the European Parliament

The analysis of the main activities in the field of interparliamentary relations among parliaments in the EU shows that an increasing number of activities are taking place and an increasing volume of human resources are being involved in such activities. Interparliamentary relations take different forms but meetings at committee level with committees of other parliaments seem to be the preferred form. Also, interparliamentary cooperation seems to be preferred only for those policy areas of shared competencies between national parliaments and the EP, and in particular economic issues and issues related to the AFSJ such as justice, migration and police cooperation.

An indicator of the importance attached by the EP to such relations is perhaps the increase in the number of meetings of the president of the EP with national parliaments’ speakers from 9 in 2008 to 22 in 2009. Although these meetings may be just formal meetings where it is unlikely that the issue of the parliamentary control of Europol could be discussed, it is interesting to notice a general trend towards an increasing number of interparliamentary relations. Also, as these are formal meetings it shows the extent to which interparliamentary relations have become part of the official agenda of parliaments.

As can be seen in Table 9 the number of interparliamentary activities passed from 276 in 2008 to 419 in 2009. Between 2008 and 2009 a total of 52 committees of national parliaments visited the EP and a total of 41 Joint and Interparliamentary Committee Meetings between national parliaments and the EP took place. As can be seen in Table 9, between 2008 and 2009 there has been a decrease in the number of joint meetings. In 2008 there were 4 Joint Parliamentary Meetings while there were only 2 in 2009. As for Joint Committee Meetings, there were 3 meetings in 2008 and only 1 in 2009. These figures confirm the views of officials interviewed for this research (discussed in the next chapter), who observe a tendency to organise fewer joint meetings due to the logistical challenge they represent because they are jointly organised by two different parliaments (personal interview with Mr. Josep Maria Ribot, EP Administrator, October 2010). A similar situation can be observed for meetings organised at committee level. Table 10 clearly shows a tendency for the total number of Interparliamentary Committee Meetings to increase over the years while the number of Joint Committee Meetings decreases. There were three Interparliamentary Committee Meetings in 2006 while by the 1st semester of 2009 5 of these meetings had already taken place. At the same time, this table confirms the tendency observed in Table 9 of a change from joint to Interparliamentary Committee Meetings as a preferred forum for interparliamentary activities. There were 4 Joint Committee Meetings and 3 Interparliamentary Committee Meetings in 2006; however by 2008 there were only 3 Joint Committee Meetings and 8 Interparliamentary Committee meetings.

If we compare the number of parliamentary meetings with those at committee level we observe a clear tendency to focus parliamentary activities at committee level. In 2008 there were 4 Joint Parliamentary Meetings and 3 Joint Committee Meetings, seven interparliamentary committee meetings and 6 interparliamentary committee meetings in national parliaments, which means a total number of 16 meetings at committee level, took place in the same period. By 2009 there were only 2 Interparliamentary Committee Meetings, whereas 19 meetings took place at committee level.

Table 9. Main activities in the field of interparliamentary relations between the national parliaments and the EP.

	2008	2009
Meetings of the President of the EP with national parliaments' speakers	9	22
Joint Parliamentary Meetings	4	2
Joint Committee Meetings	3	1
Inter-Parliamentary Committee meetings	7	6
Inter-parliamentary Committee meetings in the national parliaments	6	12
Visits to the EP by national parliaments	39	13
Visits to the EP by officials from national parliaments	208	363
Total	2284	2428

Source: European Parliament Directorate for relations with National parliaments DG for the Presidency

Table 10. Interparliamentary Committee Meetings and Joint Committee Meetings 2006-2009.

	Joint Committee Meetings (JCMs)	Inter-parliamentary Committee meetings (ICMs)	Total
2006	4	3	7
2007	4	5	9
2008	3	8	11
2009 1 st Sem	1	5	6
Total	12	21	33

Source: European Parliament Directorate for relations with National parliaments DG for the Presidency

A breakdown of the Joint Committee and Interparliamentary Committee meetings by policy area shows first of all that committee meetings between the European Parliament and the national parliaments tend to focus only on some areas. For instance as can be seen in Table 11 there has been only one meeting in two years in areas such as internal market or enlargement. These are policy areas in which the Union enjoys exclusive competences. However in areas of shared competences the number of meetings with national parliaments is substantially higher. Secondly, the area of Area of Freedom, Security and Justice is one of the policy areas with a higher number of meetings. Moreover with two meetings in 2008 and six in 2009 this is the policy area with the highest increase in the number of meetings between national parliaments and the EP in the recent years.

Table 11. Joint Committee Meetings and Interparliamentary Committee Meetings by policy area.

Policy area	2008	2009
Agriculture	2	-
Areas of Freedom, Security and Justice	2	6
Budgets	1	2
Development	1	1
Economics	1	2
Education and Culture	2	-
Energy and Environment	1	2
Enlargement	-	1
Foreign Affairs and Defence	4	3
Internal market	-	1
Regional Development	-	1
Technology	1	-
Gender equality and women's rights	-	2

Source: European Parliament Directorate for relations with National parliaments DG for the Presidency

As can be seen in Table 12 the Committees of the European Parliaments that have organised the highest number of meetings with national parliaments are the Committee on Foreign Affairs (AFCO), the Committee on Development (DEVE), the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE). These are the committees dealing with policies that are not fully in the hands of the EU. Again from this table we can clearly observe a decrease in the number of Joint Committee Meetings and an increase in the number of Interparliamentary Committee Meetings.

Table 12. Breakdown by committees: Interparliamentary and Joint Meetings 2006-2009.

	Joint Committee				Inter-Parliamentary Committee				Total
	2006	meetings (JCMs)		2009	2006	Meetings (ICMs)		2009	
		2007	2008			2007	2008		
AFCO									0
AFET					1	1	2		4
AGRI			1						1
BUDG					1	1	1		3
CONT	1					1			2
CULT		1	1						2
DEVE	1		1			1		1	4
DROI							1		1
ECON	1	1					1	1	4

EMPL									0
ENVI									0
FEMM						1	1		2
INTA									0
IMCO							1		1
ITRE	1								1
JURI					1	1			2
LIBE		1		1	1		1		4
REGI								1	1
PECH									0
PETI									0
SEDE									0
TRAN		1							1
Total	4	4	3	1	3	5	8	5	33

Source: European Parliament Directorate for relations with National parliaments DG for the Presidency

So far we have seen that there have been a number of meetings where national parliaments and the EP have met. And we have identified four tendencies: first, a tendency for the number of those meetings to increase; second, a tendency for the number of meetings jointly organised to decrease; third, a tendency for the cooperation to be focused on a parliamentary level; and finally, a tendency for cooperation to occur only in some policy areas, one of which is the AFSJ. However, little has been said about the participation of MEPs and MPs in these activities.

Interparliamentary activities require resources and they may not have immediate benefits for national parliaments. However, the participation of national parliaments in interparliamentary activities is not as reduced as a pure logic of maximisation of resources would suggest. As Tables 13 and 14 show, in 2008 a total of 39 committees incorporating almost 300 national parliamentarians from 15 member states undertook working visits to the European Parliament. And in 2009 a total of 13 committees incorporating almost 93 national parliamentarians from seven member states undertook working visits to the European Parliament.

A breakdown of the committee visits by country shows that not every country takes part in cooperation and moreover that the number of resources put in place varies from, for instance, three committee members visiting the EP in the case of Latvia to 62 in the case of Estonia. These variations confirm the idea expressed by some of the people interviewed for this research that mentioned that some parliaments are not interested in

cooperation and therefore cooperation cannot be imposed but it should mainly be for those interested.

Table 13. Visits by national parliaments to the European Parliament Committees.

National parliament	2008	
	Committee Visits	Committee Members
Czech Republic	2	20
Estonia	9	62
Ireland	2	8
Finland	2	21
France	2	30
Germany	2	18
Greece	1	12
Latvia	1	3
Lithuania	1	4
Netherlands	9	60
Poland	2	22
United Kingdom	6	35
Total	39	295

Source: European Parliament Directorate for relations with National parliaments DG for the Presidency

Table 14. Visits by national parliaments to the EP committees.

National parliament	2009	
	Committee Visits	Committee Members
Ireland	2	8
Finland	1	7
Lithuania	1	8
Netherlands	1	5
Poland	1	9
Spain	2	26
United Kingdom	5	30
Total	13	93

Source: European Parliament Directorate for relations with National parliaments DG for the Presidency

It is difficult to establish if interparliamentary activities will continue to increase speedily, but in 2008 a total of 769 MPs and MEPs took part in these meetings, while in the first four months of 2009 a total of 444 had done so: more than half of the previous year's total in only a third of the time. This tendency is clearer in the case of the LIBE Committee. A total number of 224 MPs and MEPs took part in Interparliamentary Committee Meetings in this committee during the first five months of 2009 and a total number of 18 in 2008. This seems to suggest that it is true that the entry into force of the Lisbon Treaty has boosted the interest in interparliamentary initiatives. This applies particularly to those areas where the treaty mentioned specifically the involvement of national parliaments at EU level, as is true in the case of the AFSJ. Tables 15 and 16 show that participation to Interparliamentary Committee Meetings heavily depends on

the issue discussed. For instance only 7 national parliaments attended the Round Table organised by the LIBE Committee in 2008 while 21 out of 27 national chambers took part in the Joint Committee Meeting on the Progress in the Area of Freedom Security and Justice in 2009.

Table 15. Participation in Interparliamentary Committee Meetings in 2009.

	Chambers	National Parliaments	Candidate countries	MPs (Member States)	MEPs	Other MPs*	Total MPs & MEPs
1. Total Inter-parliamentary Committee Meetings (all formats) & Joint Committee Meetings (JCMs) 2006-2009	n/a	n/a	n/a	n/a	n/a	n/a	n/a
LIBE (JCM) "Progress in the area of Freedom, Security and Justice", 19-20 January 2009	27	21	2	50	24	3	77
REGI (ICM) "The future of cohesion policy after 2013", 11 February 2009	23	18	0	33	44	0	77
ECON (ICM) "European Economy - What next?", 11-12th February 2009	33	27	0	55	76	0	131
DEVE (ICM) "Migration and Policy Coherence for Development" 12th February 2009	27	21	2	50	5	70	125
IMCO (ICM) "EU consumer law, its transposition and implementation", 2nd April 2009	21	18	0	24	10	0	34
Total	n/a	n/a	n/a	212	159	73	444

Source: European Parliament Directorate for relations with National parliaments DG for the Presidency

Table 16. Participation in Interparliamentary Committee Meetings in 2009.

	Chambers*	National Parliaments	Candidate countries	MPs (Member States)	MEPs	Other MPs**	Total MPs & MEPs
ECON Annual debate with Economics Committees of National Parliaments, 22-23 January	23	19	0	59	111	0	170
FEMM (ICM) "Gender mainstreaming in parliamentary work", 6th March	n/a	n/a	n/a	n/a	n/a	n/a	n/a
LIBE (ICM) "Framework Decision on Combating Crime", 6th April	12	n/a	0	22	60	0	82
BUDG Annual Meeting with National Parliaments (ICM), 25th June	18	14	0	19	n/a	0	19
AFET 10th Joint Meeting (ICM) Committees on Foreign Affairs and Defence, 25th June	n/a	n/a	0	34	n/a	0	34
DROI Meeting with National Parliaments on Human Rights (ICM), 25th June	23	n/a	n/a	46	n/a	n/a	46
DEVE (JCM) "European Union and Development Cooperation", 26th June	28	21	1	48	19	1	68
LIBE (ICM) Roundtable on "The integrated management of the European Unions Borders", 30th June	7	7	0	9	9	0	18
AGRI (JCM) "The future of the European agriculture and its role in the world", 3-4th November	31	21	2	75	47	3	125
AFET 11th Joint Meeting (ICM) of Chairpersons of Foreign Affairs and Defence committees, 5th November	18	17	0	25	16	0	41
JURI / LIBE Forum (ICM) "Judicial cooperation in civil matters", 2nd December	14	12	1	16	90	2	108
CULT (JCM) "Education and Culture", 8th December	15	13	1	20	37	1	58
Total	189	124	5	373	389	7	769

Source: European Parliament Directorate for relations with National parliaments DG for the Presidency

Overall the high level of participation of national parliaments in these initiatives shows that at least national parliaments are attending meetings where there could be opportunities for the exchange of information regarding the scrutiny of policies in the AFSJ. In order to find out, on the one hand, whether these are initiatives with a lot of potential but few results and, on the other hand, the extent to which they provide opportunities regarding the control of Europol, this research has analysed in detail those meetings related to the AFSJ.

First I have identified the key meetings I want to look at. This was done according to the topic of the meeting. The idea was to select all the meetings dealing with issues related to JHA in which Europol could be on the agenda plus all the meetings in which the role of national parliaments in the EU was discussed. Following the definition of interparliamentary cooperation provided in Chapter 3, the following meetings are assessed in turn:

- 17-18 October 2005 Joint Parliamentary Meeting ‘Liberty and Security: Improving Parliamentary Scrutiny of Judicial and Police Cooperation in Europe’
- October 2006 Joint Parliamentary Meeting ‘The future development of the AFSJ’
- November 2007 Joint Committee Meeting (LIBE Committee – National parliaments) ‘The future of the EU as an AFSJ’
- 16-17 November 2009, ‘Joint Parliamentary Meeting Building a Citizen’s Europe’

The Joint Parliamentary Meeting of October 2005

This meeting was held at the initiative of the EP and the UK Parliament between members of the EP’s Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) and members of national parliaments on the issue of improving parliamentary scrutiny of judicial and police cooperation in Europe. During this meeting a background paper elaborated by the policy department of the EP was distributed. After detailing the provisions in place for the exchange of personal data, the document continues by noting the disparity between data protection standards amongst member states and the urgency to solve this situation. This shows evidence that the debate over

the need to enhance the parliamentary control over Europol has been informed since 2005 and that national parliaments have taken part in it. However, it shows little evidence regarding the exchange of best practice or the coordination of scrutiny procedures.

The exchange of best practice occurred before the meeting. In preparation of the meeting a questionnaire was sent to every chamber where the following questions were asked:

- ‘1. How is national parliamentary scrutiny of JHA matters organised in your country?
2. Have there been recent reports/resolutions/debates in your national parliament on one or more of the 4 issues mentioned above?
3. Could you give us names of any Parliamentary committees and/or Members of Parliament who, in your opinion, have a direct involvement or interest in the four issues described above (please specify which issue)?
4. Could you identify the relevant officials in your Parliament who deal with these issues and provide us with their contact details for further information?’

Questions 1 and 2 are clear examples of sharing of best practice similar to what is done in the COSAC biannual reports. Questions 3 and 4 are interesting, especially question 4, because they show already in 2005 a tendency to focus parliamentary cooperation on personal exchange mainly between parliamentary officials. In the same vein, the European Parliament expressed in the program of the meeting its ‘desire to improve cooperation between national parliaments and the European Parliament in their scrutiny of measures to implement the area of freedom, security and justice’ and to find ‘ways in which informal exchanges of information and networks of interested parliamentarians and parliamentary officials could be established in the field of the AFSJ’. 14 parliaments provided answers. This may not be a huge percentage of them but still it shows a clear attempt already in 2005 to share information and to start building working networks.

The Joint Parliamentary Meeting of October 2006

This meeting discussed the future development of the AFSJ and addressed the following questions: How will improved parliamentary oversight of Europol be organised?; What

could be the role of the national parliaments?; Should a joint parliamentary committee of representatives from the EP and national parliaments be established? This meeting was held in the context of the intention of the European Commission to present a proposal for replacing the existing Europol Convention and the questions they intended to address give us a sign of the degree of the changes ahead and the existing new possibilities. No definitive answers were found. But it is interesting to see that since the modification of Europol's legal framework was first planned national parliaments and the EP have discussed in interparliamentary fora the future interparliamentary control of Europol.

The Joint Committee Meeting of November 2007

Again prior to this meeting a questionnaire was sent to every parliament. This questionnaire however did not provide the opportunity for national parliaments to share scrutiny practices, as there were no questions addressing this issue. However, the questionnaire provided parliaments with the opportunity to share their views regarding future tools of scrutiny in the AFSJ. In particular, the question addressed was whether or not IPEX should include a separate section for sharing information regarding the AFSJ. Again there is little evidence to suggest anything closer to a coordination of a scrutiny strategy but at least opinions are asked in order to see what could be the future way to arrange collaboration.

The Joint Parliamentary Meeting of November 2009

For this meeting the Swedish Presidency prepared a background paper mentioning the intentions of the Stockholm Programme that 'Europol is to serve as a hub for information exchange between the law enforcement authorities and a platform for networks in the field of police and customs cooperation between member states'. Although this may not be very specific information on legislation affecting the remit of Europol it is an example of information regarding Europol and its future being shared among parliaments. Also during this meeting, the European Parliament shared a background policy which mentioned the changes future changes of Europol.

There is a lot of potential in these meetings because of their sectoral nature. However, so far it seems that they have only served as fora for discussion.

How Much Interparliamentary Control to Date?

Neither national parliaments nor the EP had sufficient legal means to provide effective parliamentary control over Europol. A survey done by COSAC Secretariat (COSAC, 2009a) describes the situation for most national parliaments, as one in which there is ‘no systematic scrutiny of Europol at national level’ (COSAC, 2009a:6). However, according to this survey national parliaments ‘share the conviction that proper parliamentary control of Europol (and Eurojust) is necessary’ (COSAC, 2009a:6). Some national parliaments found *ad hoc* ways to be informed about the activities of Europol but for the rest most national parliaments could only have a limited indirect control over the agency via the parliamentary control of their national ministers in charge of Justice and Home Affairs. Parliamentary control provided by the EP was also scant. Although the EP received Europol’s annual programme, it lacked any legal means to provide proper scrutiny. Scrutiny was confined to informal hearings and round tables attended by the Europol Director. Interparliamentary control could address some of these deficits. This thesis has identified four different initiatives in this regard: networking initiatives; Interparliamentary Committee Meetings, personal relations between MPs and MEPs of the same political line, and COSAC meetings.

Representatives of national parliaments have a formal meeting every week, the so called MMM (Monday Morning Meeting). ‘But there are lots of informal meetings’ (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010). National representatives have their offices in the floor at the EP building and ‘it is common to simply go to the office of another representative in order to ask something needed’ (personal interview with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010). Issues regarding to the parliamentary control of Europol have been discussed in those meetings. However these meetings have not served the purpose of coordinating any scrutiny activity. They have served the purpose of exchanging information but little of this information regarded precise legal measures affecting Europol. It could be observed however that groups of parliaments tend to work together

towards some objectives and this work is coordinated by their representatives. For instance, the Danish parliament has managed to obtain the support of other parliaments to put forward a suggestion to the Commission in order to come forward with a proposal for an interinstitutional agreement to arrange the relations between the European Parliament and the national parliaments regarding the parliamentary control of Europol. The success of this suggestion may be unlikely but the fact that parliaments have coordinate their views is already a sign of cooperation. And it tells of the important role played by their representatives in Brussels.

Interparliamentary Committee Meetings dealing with the issue of the parliamentary control of Europol have increased. Particularly in the recent years there have been a substantial number of meetings dealing with the issue (personal interviews with Lord Bowness, House of Lords European Affairs Committee, October 2010, and Mr. Agustín Díaz de Mera MEP, LIBE Committee, November 2010). Two main problems have been identified regarding this type of cooperation. One the one hand, the legal basis for the parliamentary control to take place in such fora is not ready yet so these arrangements have been informal. Second, MPs attending these meetings vary frequently and this difficulties a dynamic for work. Some national parliaments are trying to solve this problem by making sure that always the same MPs attend such meetings. This is for instance the intention of the Italian Senate (personal interview with Ms. Beatrice Gianani, Representative of the Italian Senate, October 2010). Despite these two problems, these meetings have provided opportunities to ‘share information and to debate’ (personal interview with Mr. Díaz de Mera MEP, LIBE Committee, November 2010). But the effect of those meetings on parliamentary control is rather limited (personal interview with Mr. Josep María Ribot, EP Administrator, October 2010).

Over the years there have been more structured initiatives such as the already mentioned PARLOPOL, essentially a network for the exchange of information together with a meeting of MPs and MEPs in charge of Justice and Home Affairs. However, they came to nothing (personal interview with Mr. Emilio De Capitani, Head of Unit LIBE Committee Secretariat, October 2010). In the case of PARLOPOL in particular, there were two meetings, one in The Hague and one in Brussels. The next meeting should

have been organized by the Danish parliament but they did not organize it at the end. According to the representative of the Danish parliament in Brussels, ‘that was a pity’ because PARLOPOL was ‘a good idea’ (personal interview with Mr. Peter Juul Larsen, Representative of the Danish Parliament, October 2010). Why did these formal initiatives come to nothing? Probably ‘there was no political will’ (personal interview with Mr. Emilio De Capitani, Head of Unit LIBE Committee Secretariat, October 2010). At the end of the day parliamentary control involves resources moreover if this is to be done at European level.

Some of MEPs and MPs working on the issue admit they welcome interparliamentary initiatives. ‘There are some of my colleagues that do not think that those meetings are terribly useful. (...) I welcome them’ said Lord Bowness when asked about the usefulness of the several Interparliamentary Committee Meetings dealing with the parliamentary control of Europol he has attended. In his opinion ‘if they [national parliaments] want to be involved and they want to have the opportunity to discuss these matters they need to attend such meetings and to have discussions with MEPs and to build relations with the EP’ (personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010). Opinions of Spanish and Italian parliamentarians go in a similar direction (personal interviews with Ms. Carmen Sánchez-Abarca Gornals, Representative of the Spanish parliament, October 2010, and Ms. Beatrice Gianani, Representative of the Italian Senate, October 2010). The representative of the Spanish parliament in Brussels noted that ‘whenever they are invited, Spanish MPs are willing to attend Interparliamentary Committee Meetings’ (personal interview with Ms. Carmen Sánchez-Abarca Gornals, Representative of the Spanish parliament, October 2010). However, the view of national parliamentarians as committed to the scrutiny of European Affairs and interparliamentary cooperation is not always shared by MEPs. According to Ms. Sophia In ‘t Veld, MEP Vice-Chair of the LIBE Committee, Interparliamentary Committee Meetings ‘do not work (...) MPs sometimes do not show up (...) and it is more an exchange of statements’ (personal interview with Ms. Sophia In ‘t Veld MEP, Vice-Chair LIBE Committee, October 2010).

For those critical of the usefulness of Interparliamentary Committee Meetings, real interparliamentary cooperation is done informally, in many cases through contacts along party lines. In the words of the Head of the Secretariat of the LIBE Committee the real interparliamentary cooperation in the area LIBE works on is done by MEPs when they go ‘to their national parliaments’ (personal interview with Mr. Emilio De Capitani, Head of Unit LIBE Committee Secretariat, October 2010). Ms. Sophia In ‘t Veld MEP gave an example on how this works:

What we do is we try to tackle the same subject at the same time both at the EP and in the national parliament. For example if I table a parliamentary question on a particular topic then I ask my colleagues in the national parliament to put in the same question or a similar question at the same moment.

(...)

Or when the national parliament has to debate about a European topic, I will provide input. And the same when we are having a debate. I ask them for input on the national situation. We also do that with parliaments from other member states, not only my own national parliament (personal interview with Ms. Sophia In ‘t Veld MEP, Vice-Chair LIBE Committee, October 2010).

Cooperation along party lines is increasingly important, and most people see the added value of working with party colleagues. However, there are good reasons to have formal cooperation structures as well. As Lord Bowness put it ‘you cannot guarantee that members of your own party are the chairmen or rapporteurs of a relevant committee’ (personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010).

The Conference of European Affairs Committees, COSAC, has been a forum for the exchange of information regarding the scrutiny of Europol. National parliaments have shared their scrutiny best practice via the biannual reports compiled by the COSAC Secretariat in preparation of the meetings. This has been a very useful tool for parliaments to be informed about the practice in other countries. For this reason, COSAC has potential as an institution that could influence the way parliamentary scrutiny is done but it has not managed to establish coordinate scrutiny strategies. The most it has done is to serve as a vehicle for the exchange of best practice. It needs to be mentioned however that for COSAC it is very difficult to do anything more than sharing best practice. As autonomous bodies, parliaments do not generally tolerate any

involvement in their own business. However, some parliaments have asked the COSAC Secretariat to ‘monitor the implementation of Art.12 of the Lisbon Treaty’ which mentions explicitly the involvement of national parliaments in the parliamentary control of Europol. The way COSAC could do that is by using its contributions. Although this has not happened yet, the fact that some parliaments have asked for it means that practice of parliamentary scrutiny regarding Europol is discussed in COSAC among various parliaments.

Despite increasing number of activities in practical terms little has been achieved regarding the parliamentary control of Europol. Is this because interparliamentary cooperation is not useful? What do those taking part in processes of interparliamentary control think? Do they consider it fruitful or more as a burden or simply as a Treaty obligation? Moreover, how do they explain the fact that interparliamentary practices of control seem to develop only now, more than ten years after it was first suggested?

According to Mr. Peter Jull Larsen, representative of the Danish parliament in Brussels, ‘there is an advantage in working together’ (personal interview with Mr. Peter Juul Larsen, Representative of the Danish Parliament, October 2010). Lord Bowness expressed a similar view and admitted that his committee, the Committee on European Affairs of the House of Lords, and its Chairman Lord Roper, are ‘very anxious to build relationships with the EP’ (personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010). However, it seems that, particularly in the case of Justice and Home Affairs, members of the LIBE Committee do not feel national parliaments are very committed to cooperation. The president of the LIBE Committee signalled the commitment of the LIBE Committee to working together with national parliaments but lamented that ‘it is more the LIBE Committee that looks for national parliaments than vice versa’ (personal interview with Mr. Juan Fernando López Aguilar MEP, Chair LIBE Committee, November 2010). Ms. Sophia In ‘t Veld MEP, Vice-Chair of the LIBE Committee, reaffirmed this view. According to her, ‘national parliaments are busy with national issues. And they consider European issues as added to their normal work. And they do not consider it [scrutiny of European Affairs] their work’ (personal interview with Ms. Sophia In ‘t Veld MEP, Vice-Chair LIBE

Committee). The representative of the Spanish parliament in Brussels explains this problem in the following terms:

We are conditioned by the political interest every issue produces. After all, parliaments are political institutions where decisions are made based on many criteria that are not always academic criteria. There are many interests and clearly European issues are not at the centre of the political discussion in Spain (personal interview with Ms. Carmen Sánchez-Abarca Gornals, Representative of the Spanish parliament, October 2010).

I asked about the reasons why interparliamentary practices of control have started to be developed only now. When the overall weakness of parliamentary control over Europol is lower due to the improvements brought about by the Council Decision on Europol, such as the position of the EP as a budgetary authority, some participants suggested that the inclusion of national parliaments via interparliamentary cooperation provides an argument against those worries related to the European Union 'becoming a super state' (personal interview with Ms. Sophia In 't Veld, MEP Vice-Chair LIBE Committee, October 2010). The inclusion of national parliaments via cooperation might have been the only way to advance on further integration. In this sense interparliamentary cooperation could be understood as a side effect of the enhanced role the Council Decision provided for Europol. In other words, despite the numerous discussions on the need to improve parliamentary control, the real need to improve it had not been realized until Europol became a fully-fledged European agency. Another explanation is that parliamentary control has evolved in compass with the role of Europol. This idea was already expressed in 2001 at the first parliamentary meeting discussing the democratic control of Europol in The Hague when Mr. Hugo Coveliers, at the time a member of the House of Representatives of Belgium, warned that 'parliamentary control on the national or European level will be different depending on the tasks of Europol' (Dutch Senate, 2002:23).

But some see the current development of cooperation more as a consequence of the new role given to national parliaments by the Lisbon Treaty and the need to actualize models of control to what is required by the Treaty. Asked for the reasons why interparliamentary solutions to the parliamentary control of Europol were discussed for ten years but little seemed to be achieved, Lord Bowness answered: 'I do not think there is another answer than that the situation has changed with the advent of Lisbon'

(personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010). He is not the only one holding this view. As a permanent member of COSAC's Secretariat, Ms. Loreta Raulinaitytė, explains 'parliamentary democracy has been developed (compared to) twenty years ago [when] there was not a single reference to national parliaments in the body of the Treaty. Now we have references to national parliaments all over in the Lisbon Treaty. And national parliaments are involved more and more' (personal interview with Ms. Loreta Raulinaitytė, Permanent Member COSAC Secretariat, October 2010). These changes, in the view of the representative of the Spanish parliament in Brussels, 'allow for things that before were not happening to happen now' (personal interview with Ms. Carmen Sánchez-Abarca Gornals, Representative of the Spanish parliament, October 2010).

The Future of the Parliamentary Control of Europol

Article 88 of the Lisbon Treaty provides for the involvement of national parliaments together with the European Parliament in the political monitoring of Europol. However, this provision has not yet been implemented as it requires for a regulation to be drafted and the Commission has not yet made a proposal and it only intends to present one in 2013 (European Commission, 2010). Moreover, there are different ways to arrange cooperation and not every parliament has the same opinion as to how it would be better to arrange it.

Strictly speaking this regulation should deal with 'Europol's structure, operation, field of action and tasks' and with the 'procedures for scrutiny of Europol's activities by the European Parliament, together with national parliaments' (TFEU Art.88). This means that the Council Decision on Europol, which entered into force before the Lisbon Treaty, will be replaced. The precise form in which national parliaments and the EP will take part in the scrutiny of Europol will be defined by a regulation subject to the ordinary legislative procedure (former co-decision) where the EP and the Council are co-legislators. Discussions have already started but the Commission is not planning to come up with a proposal for the regulation until 2013 (European Commission, 2010). Therefore parliaments have time to experiment with and assess what interparliamentary fora best fits their needs and to influence the future of the parliamentary control in this

area. Moreover, nothing prevents the development of a regulation dealing only with the parliamentary control of Europol before 2013 and to leave other matters – the structure, operation, field of action and tasks to be dealt with – for decision in 2013. This is what some parliaments would like to see. At the end of the day the main reason to support the Lisbon Treaty was ‘the increased role of national parliaments’ (personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010) and ‘2013 is too long to wait’ to have the measures of the Treaty implemented (personal interview with Mr. Peter Juul Larsen, Representative of the Danish Parliament, October 2010). If the Commission cannot make a proposal dealing only with the parliamentary control of Europol, the Danish Parliament’s Representative in Brussels proposes another solution. This solution is to have an ‘inter-institutional agreement between the European Parliament, the national parliaments and Europol’ (personal interview with Mr. Peter Juul Larsen, Representative of the Danish Parliament, October 2010). However this is not that easy because of the disagreements among parliaments regarding the type of forum they would like. In this regard, the proposals range from the use of existing Interparliamentary Committee Meetings (e.g. the Finnish Eduskunta) to the creation of a specific mixed committee composed of members of national parliaments and the EP (e.g. the French Sénat), or the use of COSAC either in its current form or by developing new thematic-COSAC meetings (COSAC, 2009a). Most national parliaments agree that ‘no new forum should be created’ (COSAC, 2009b:66; Personal interviews with Ms. Beatrice Gianani, Representative of the Italian Senate, October 2010 and with Mr. Ed Lock, Representative of the House of Lords in Brussels, January 2010). Opposition to the creation of a new joint committee is also found on the side of the EP, which believes that ‘scrutiny and evaluation matters of Europol/Eurojust should rather be left to the competent specialized committees’ (COSAC, 2009b:260). Among the already existing fora the most discussed interparliamentary formats are the so-called Joint Committee Meetings and COSAC. Each forum has its supporters and detractors.

The European Parliament is quite keen on having the scrutiny of Europol done at a Joint Committee Meeting of its LIBE Committee together with the correspondent committees in national parliaments. ‘The EP is offering the premises; they are also offering the Secretariat support (personal interview with Ms. Loreta Raulinaitytė, Permanent

Member COSAC Secretariat, October 2010). The EP has already made a move by organizing a number of Joint Committee Meetings in an attempt to ‘establish the practice’ and be able to present it as an option for the future (personal interview with Mr. Emilio De Capitani, head of Unit LIBE Committee Secretariat, October 2010). Some national parliaments like the Italian parliament and the Danish parliament support this option (personal interview with Mr. Peter Juul Larsen, Representative of the Danish Parliament, October 2010, and Ms. Beatrice Gianani, Representative of the Italian Senate, October 2010). ‘Normally we do not like that, we prefer COSAC’ explains the representative of the Danish parliament in Brussels. But he recognizes that due to the higher expertise of the LIBE Committee a Joint Committee Meeting with the LIBE Committee ‘will be for the benefit of national parliaments’. Another reason for the Danish parliament to follow the idea of the EP and to agree with the leading role of the EP is that it trusts in the work of the LIBE Committee because this committee is working ‘quite well’ (personal interview with Mr. Peter Juul Larsen, Representative of the Danish Parliament, October 2010). The representative of the Italian Senate also mentioned such trust in the LIBE Committee, particularly in its Secretariat (personal interview with Ms. Beatrice Gianani, Representative of the Italian Senate, October 2010). ‘The question is whether the House of Lords, the Bundestag and the French Assemblée Nationale will agree with this clear dominance and leadership of the EP in matters like this’ (personal interview with Ms. Loreta Raulinaitytė, Permanent Member COSAC Secretariat, October 2010). When asked about such a possibility Lord Bowness said ‘[M]aybe the EP has a role to pull all that together at the end, maybe they do. Or alternatively because we are talking about national parliaments maybe that is another reason for COSAC to do it’ (personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010).

The political monitoring of Europol could also take place in COSAC. The COSAC Secretariat seems enthusiastic regarding this possibility. In the words of its permanent member ‘COSAC is the body that unites all national parliaments and the EP all 41 chambers, which meets regularly, which costs nothing, which has a small Secretariat. It is an excellent body to do that’ (personal interview with Ms. Loreta Raulinaitytė, Permanent Member COSAC Secretariat, October 2010). In a similar move to the one of

the LIBE Committee, COSAC started to discuss in 2008 ‘how the monitoring could be done’. And it has since included this issue in its biannual reports and ‘will continue to do that’ (personal interview with Ms. Loreta Raulinaitytė, Permanent Member COSAC Secretariat, October 2010). The possibility of adding the topic as a recurrent issue on the COSAC agenda is supported by a large majority of chambers (30 over 41) (COSAC, 2010a). But eight national chambers and the European Parliament do not favour the idea of holding regular debates on Europol and Eurojust in the framework of COSAC. These include the German Bundestag, the Dutch Tweede Kamer, the Spanish Cortes Generales and the Swedish Riksdag (COSAC, 2010a:41). Additionally, for the Belgium Senate, COSAC does not seem to be ‘the most adequate tool’ for the scrutiny of Europol (COSAC, 2009b:24).

Another problem for COSAC is that opinions of parliaments also differ regarding details such as what the future COSAC meetings on the scrutiny of Europol should eventually look like in terms of content, structure and people taking part on them (COSAC, 2010a:11-14). For instance, the Austrian, Danish and Latvian Parliaments, together with the French Sénat, the German Bundesrat, and the Slovenian Državni svet and the Czech Senát would like COSAC debates on Europol to be preceded by hearings of representatives of the agency as well as introductory evaluations by representatives of the academic world, judiciary and/or law enforcement services. On the other hand, the Dutch Eerste Kamer favours COSAC discussions to be based ‘on expert reports, as opposed to hearings of representatives of Europol’ (COSAC, 2010a:41). In any case, the fact that COSAC will eventually establish an Interparliamentary Committee Meeting does not rule out the possibility of a Joint Committee Meeting of the LIBE Committee to also deal with this matter. In the words of the president of the LIBE Committee, ‘European integration is not done eliminating previous formats but rather by accumulating and adding new formats to previous formats. (...) The idea is to have parliamentary meetings on the one hand and COSAC on the other’ (personal interview with Mr. Juan Fernando López Aguilar MEP, Chair LIBE Committee, November 2010). This is probably far from the general idea expressed by participants in the interparliamentary committee meeting held on 4-5 October 2010 who asked for a limit on the number of Interparliamentary Committee Meetings and for those meetings

already in place to be utilised without creating new ones.

The way to go is probably a mix approach. Mr. Agustín Díaz de Mera MEP, a member of the LIBE Committee and rapporteur for the Council Decision on Europol, proposes a meeting in Brussels of only the chairpersons of the Justice and Home Affairs committees (personal interview with Mr. Agustín Díaz de Mera MEP, LIBE Committee, November 2010). On his view, a forum like this one has the advantage of reducing costs significantly and also provides Europol with a forum in which information can be revealed without the risk of jeopardizing Europol's work, as might sometimes be the case if the agency reports to more open fora. The committee could work in the following manner:

‘The committee would meet three times a year. One time in order to evaluate Europol's budget. Another time in order to evaluate the use of the budget. And the third time in order to evaluate the activity plan. There should also be the possibility of establishing control mechanisms for extraordinary events and for when the Europol Director would ask at his own initiative to speak before the committee’ (personal interview with Mr. Agustín Díaz de Mera MEP, LIBE Committee, November 2010).

However, not everyone is convinced of the capacity of those fora to provide ‘real scrutiny’ (personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010). According to Lord Bowness, Interparliamentary Committee Meetings, whichever form they may take, are only going to be ‘the end of the process’. What he proposes is for national parliaments individually to scrutinize Europol's report before a meeting with other parliaments takes place. During this process each national parliament individually would be able to pose questions and to analyze detailed information. Then a meeting with other parliaments including the EP could be convened. He recognized that such meetings between national parliaments and the European Parliament ‘may be the forum where the head of Europol is able to come and to talk and it may be the place where he would be questioned on major issues of concern’ (personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010). The important point for him is that the actual scrutiny of Europol's activity and financial reports and the posing of the questions will be done in national parliaments in advance of any meeting between parliaments would take place. Because ‘that meeting is not going to provide the right kind of forum for people to raise

detailed questions and get detailed answers’ (personal interview with Lord Bowness, House of Lords European Affairs Committee, October 2010).

The particular feature of the proposal made by Lord Bowness is that it introduces a preliminary phase in which national parliaments individually assess the work of Europol. There is indeed nothing in the Treaty preventing national parliaments from organising their involvement on the ‘political monitoring of Europol’ (TEU Art.12) as they wish. Some chambers (e.g. the Belgian *Chambre des Représentants*, the Estonian *Riigikogu*, the Romanian *Camara Deputatilor*, and the Hungarian *Országgyűlés*) have reported to the COSAC Secretariat that they have already defined the modalities of their future involvement in the scrutiny of Europol (COSAC, 2009a:11). This preliminary phase of scrutiny done at national parliaments could involve cooperation or not. Parliaments could choose to scrutinize the report on Europol without sharing it with other chambers. However this seems a very unlikely idea. Some parliaments are already thinking of using IPEX, as a tool both for sharing the reports they may draft on Europol’s annual report but also for the exchange of information for this act of scrutiny. In this regard, the representative of the Danish parliament in Brussels mentioned that his parliament is ‘working on the reform of IPEX’ (personal interview with Mr. Peter Juul Larsen, Representative of the Danish Parliament, October 2010).

Conclusion to Chapter 5

This chapter has looked in detail at the evidence from different interparliamentary practices in order to establish the level of parliamentary control regarding Europol developed in each of them. Data shows that a significant number of speeches made at the plenary of the EP combined in its title the words ‘national parliaments’, ‘cooperation’, ‘COSAC’ and ‘Europol’. Regardless of the content of these speeches, this shows that these issues have been discussed and they are considered to be relevant.

IPEX is regarded as a useful tool by MPs but its use is still limited and the extent to which information shared has any effect on the scrutiny of other parliaments is not clear. Analysis of the use of IPEX shows that IPEX has been used to share information regarding legislation affecting Europol. 45% of the national chambers of the EU shared

via IPEX the report of the scrutiny they did on the council decision on Europol. Considering that not every chamber might have written a report this percentage is quite high. This chapter has tried to measure the effects that this information has on the scrutiny of other parliaments by looking for reference to this information in reports and debates in other parliaments. However, results on the effect of this information shared are inconclusive because reference on parliamentary debates to information shared in IPEX or retrieved via are not common. Therefore, it is difficult to assess the effect such practice has. The general impression from the analysis of the debates is that MPs regard IPEX as a useful tool, however, personal interviews have confirmed that its use remains confined to specialist parliamentary officials. Moreover, some parliaments have expressed concerns regarding the extent to which IPEX is the right tool for quick information exchange, which may be required in the case of the parliamentary scrutiny of Europol.

The analysis has shown an increasing number of human resources committed to COSAC over the years. Improvements made by the Protocol No.1 of the Lisbon Treaty gave COSAC the possibility to organise interparliamentary conferences on specific topics. Yet, specialised COSAC meetings have not been convened. COSAC, and in particular its annual reports, have been a major tool for parliaments to share best practice on how they scrutinise Europol. The last four COSAC bi-annual reports have dealt with the issue of Europol and an analysis of the members attending those meetings has shown that a high number of them were from Justice and Home Affairs Committees.

The number of interparliamentary activities has significantly increased in the last year. There is a tendency to focus these activities on sectoral basis. As in the case of COSAC, in preparation for those meetings, questionnaires have been circulated to various national parliaments. One of these questionnaires shows evidence of attempts to collect information in order to build a network for informal exchanges. However, the evidence presented in this chapter does not allow us to judge to what extent this has happened. Interviews and participant observation have been carried out in an attempt to fill this gap. These methods showed that much of the cooperation to date has been centred on

four different initiatives: relationships between representatives of national parliaments, Interparliamentary Committee Meetings, personal relations between MPs and MEPs, and COSAC meetings.

Relationships between representatives of national parliaments in Brussels are perhaps one of the most successful modes of cooperation, which occur either through their regular meetings or through the exchange of information via IPEX, the Interparliamentary EU Information Exchange. In addition, there are frequent informal meetings. The informal nature of these meetings and the spirit prevailing among participants promotes the exchange of relevant information (Ruiz de Garibay, 2010:10). However, these meetings have not served the purpose of coordinating any scrutiny activity. They have served the purpose of exchanging information but little of this information regarded precise legal measures affecting Europol.

There have been an increasing number of Interparliamentary Committee Meetings dealing with the issue of Europol, however cooperation through these meetings have found two main problems: on the one hand, there is no legal basis for the scrutiny to occur in those meetings; on the other hand, MEPs attending those meetings vary frequently and this makes working relationships difficult. This chapter has presented evidence of some parliaments trying to solve this latter problem by making sure that always the same MEPs attend such meetings. Although the effect of Interparliamentary Committee Meetings may be limited, participants assure that they provide a useful opportunity to share information and to debate. However this may sound plausible, this research has found contrasting voices who believe that real cooperation happens along political lines, particularly by MEPs attending meetings at national parliaments, or by coordination of scrutiny mechanisms such as the coordination of parliamentary questions on the same issues both at the EP and at the national parliament. However, no such examples could be found for the scrutiny of Europol. In addition, there are contrasting opinions over the capacity of those fora to provide real scrutiny: from interviewing the participants, some interviewees admitted of being sceptical, while others consider those fora to be too large.

Despite interparliamentary solutions for the interparliamentary control of Europol been discussed since 2001, there was not much political will in formalising them. It is only with the entry into force of the Lisbon Treaty that cooperation is starting to be taken seriously in this field and currently parliaments are gathering in the process to achieve a legal framework within which the EP and the national parliaments will be able to start cooperating in practice. It is hoped that a final and formal proposition upon which all parliaments will agree will be made by 2013. However, the issue is not that simple for there are different ways to arrange cooperation and not every parliament has the same opinion as to how it would be better to arrange it. Two main actors are trying to influence the final outcome, namely the COSAC Secretariat and the LIBE Committee. Looking at the future, the COSAC Secretariat has surveyed the opinion of national parliaments and it has dealt with the issue of Europol. Simultaneously, on the side of the EP, the LIBE Committee convened several meetings with national parliaments in order to establish the practice for the future and some of the interviewees report to agree with the leading role of the EP due to trust in the work of the LIBE Secretariat.

CONCLUSION

Established by the Europol Convention –an international convention– Europol was originally an intergovernmental body. Parliamentary control was provided indirectly by national parliaments through the scrutiny of the ministers who attended the Council of Justice and Home Affairs. However, the Council did not directly oversee the activities of Europol and the capacity of national parliaments to get information about Europol was quite limited. Without any formal agreement for the direct scrutiny the EP lacked the competencies to balance the deficit of national parliaments. However in 2010 Europol became an EU agency which allowing the PE, among other things, a certain degree of control over the budget of Europol. Furthermore, the Lisbon Treaty provides that national parliaments and the European Parliament should carry out the political monitoring of Europol jointly (TFUE Art. 88). In this context, this thesis has analyzed the evolution of parliamentary scrutiny of Europol as a case of institutional development within the representative-democratic institutions of the EU. The form the parliamentary control of Europol will have has not yet been decided. However, changes in parliamentary practices have already taken place in preparation for the new mode in which both national parliaments and the European Parliament will be involved. By studying these emerging practices we have tried to answer the following question: What is the best way to weigh the involvement of national parliaments and the European Parliament on the parliamentary control of a European agency such as Europol?

This thesis has made a detailed analysis of the relative importance of interparliamentary cooperation as compared to the increasing monitoring role of the European Parliament in the process of institutional incorporation of Europol. Evidence has been presented showing that while interparliamentary solutions to the parliamentary control deficit has been on the agenda every time the legal framework of Europol was changed, this solution has never been implemented opting instead for an increasing in the parliamentary control powers of the EP. This may partly explain the slow progress made in developing interparliamentary practices of control. This explanation is in line with the information obtained in the interviews carried out for this research, in which

the lack of political will was mentioned as the main reason for the poor development of interparliamentary initiatives.

In 2001 at the first interparliamentary conference on the democratic control of Europol the Dutch parliament suggested the creation of PARLOPOL, a network of national parliamentarians and MEPs for information sharing. The aim of this initiative was to reduce the lack of information national parliaments faced when dealing with Europol. However, PARLOPOL only met twice. In 2002 the European Commission proposed the creation of a joint committee of MPs and MEPs for the supervision of Europol. Apparently well received, this proposal was included in early drafts of the so-called Danish protocol, which amended the Europol convention in 2002. However, the proposal was not included in the version on which the agreement was reached. The creation of a joint parliamentary committee to oversee Europol was suggested again in 2006, during the drafting of the Europol Council Decision, the legal framework that replaced the Europol Convention in January 2010 and transformed Europol in an EU agency. However, again this time the proposal was not included in the final agreement. But this did not mean abandoning the idea of joint parliamentary control. In fact, the debate on interparliamentary solutions to the parliamentary control of Europol is still alive. Europol became an EU agency in January 2010 –before the entry into force of the Lisbon Treaty– so the legal basis of Europol should be modified in order to implement the new provisions of the Lisbon Treaty, including the political monitoring of Europol by the European Parliament and the national parliaments together (TFEU ART.88).

The study of the evolution of the parliamentary control of Europol allows us to understand how interparliamentary practices have been developed and why they take one form and not other. *HI* suggested interparliamentary practices of control would arise due to the inability of both the EP and national parliaments to provide effective parliamentary control. However, this thesis has shown that it was precisely the reform of the parliamentary control of Europol, a by-product of the transformation of Europol into an EU agency, i.e. under tighter parliamentary control of the EP, which laid the foundations for the development of interparliamentary control practices. In the early stages of the development of Europol, the EP was concerned with the improvement of

its parliamentary control powers. The action of other actors (in this case national parliaments) was seen rather as a threat to the EP's position as guarantor of parliamentary control at European level. This research has found that, to some extent, this perception is still held by some MEPs and that it could be one of the reasons hampering the development of certain type interparliamentary practices of control. It is difficult to say that the development of interparliamentary practices in the case of parliamentary control of Europol, has taken place in order to find a solution to improve parliamentary control. Before Europol was transformed into an EU agency the EP expressed itself in the following terms 'as a European body, Europol should be controlled by another European body –the European Parliament– and not by the national parliaments' (European Parliament, 2002a). Once Europol stopped being an intergovernmental agency to become an agency of the EU, the discourse of the EP regarding parliamentary cooperation changed. In its resolution of 25 November 2009, the European Parliament asked the Commission to present a legislative proposal on the involvement of the European Parliament and national Parliaments in the evaluation of the AFSJ (Area of Freedom Security and Justice) agencies, including Europol (European Parliament 2009e: pt.148). This confirms the results of previous research that suggested that an increase in their parliamentary control powers might not be the main objective of parliament for taking part in interparliamentary practices (Larhant, 2005).

Previous studies suggested that the logic of interparliamentary cooperation is found on the fact that it achieves the objective of all the stakeholders involved on it (Westlake, 1995). *H2* suggested that the development of interparliamentary practices would happen only if they promoted the interests of both the EP and national parliaments. As shown, despite their potential to solve the parliamentary control problems of Europol, the successive reforms to its legal framework (as intergovernmental body) did not include interparliamentary bodies of control. In the successive reforms we have not seen any special interest of national parliaments to establish such bodies in order to break with their asymmetric information when dealing with Europol. Most likely an increase in the tasks performed at the level of the EU, which the creation of interparliamentary structures of supervision would have implied, was not something national parliaments had special interest in. But the evidence found by this research regarding this point is

contradictory. MEPs, MPs and parliamentary officials interviewed for this research agree on the low interest that EU scrutiny generates in national parliaments. But the same Members of Parliament and officials mentioned that national parliaments are very interested in shaping the future development of interparliamentary cooperation and that the issue of participation of national parliaments in the scrutiny of Europol has been followed with interest (personal interview with Ms. Carmen Sánchez-Abarca Gornals, Representative of the Spanish Parliament, Oct. 2010). On the other hand, the Council Decision of Europol, which incorporated Europol into the EU, met most of the demands of the EP. However, this research has not found any evidence to suggest that national parliaments opposed the increase in parliamentary control powers of the EP at the expense of the status quo in which the only parliamentary control bodies were national parliaments (albeit indirectly through parliamentary control of his ministers of Justice and Home Affairs). In addition it should be noted that the Treaty refers only to the development of future regulations to 'establish the procedures for the control of Europol's activities by the European Parliament, together with national parliaments' (TFEU Art.88 (2b)). This must be done in accordance with the so-called ordinary legislative procedure (former co-decision) in which the Council and the EP are co-legislators. This implies that the institutionalization of future interparliamentary practices for the joint control of Europol shall have the support of the European Parliament.

How to explain then the inclusion of national parliaments in parliamentary control of Europol? And why has it taken a specific form and not other? The inclusion of national parliaments at EU level could have been the only way to move forward towards greater integration. As some MEPs mentioned during this study, the inclusion of national parliaments provides an argument against those concerns that the EU could become a super-state. In this sense, parliamentary coordination can be seen as a necessary side effect of the increasing scrutiny role of the European Parliament. In a way the hypothesis as expressed by Westlake (1995) is confirmed according to which the involvement of national parliaments in the EU and some of the practices that emerged inter her to be tried by the PE to strengthen its role in the legislative process, while national parliaments sought to increase their control over the PE. In a way this confirms

the hypothesis already proposed by Westlake (1995) according to whom the involvement of national parliaments in the EU and the interparliamentary practices that emerged with it occur due to the attempt by the Parliament to strengthen its role in the legislative process, while national parliaments sought to increase their control over the PE. On the other hand, despite the numerous discussions on the need to improve parliamentary control, the real need to improve it had not been realized until Europol became a fully-fledged European agency. Hence, the parliamentary control has evolved in compass with the role of Europol. This idea was already expressed in 2001 at the first parliamentary meeting discussing the democratic control of Europol in The Hague when Mr. Hugo Coveliers, at the time a member of the House of Representatives of Belgium, warned that ‘parliamentary control on the national or European level will be different depending on the tasks of Europol’ (Dutch Senate, 2002:23).

The inclusion of national parliaments in a flexible manner without creating new structures at European level has been the solution that has satisfied both national parliaments and the European Parliament. On one hand, this system has the advantage of leaving the European Parliament as the main democratic-representative organ at EU level and it does not increase the number of veto players in an already cumbersome decision-making system such as the EU. Additionally, national parliaments are included at EU level without investing excessive resources for it and with the advantage of being able to benefit from the analysis of the European Parliament with its full-time focus on EU scrutiny. While the new system means a loss of (formal) power for national parliaments, there is no empirical evidence to suggest that they would refuse the inclusion of Europol in the EU. One possible explanation is that the *status quo* was not so satisfactory after all. Despite having a formal role on the ratification of the protocols to amend the Europol Convention, national parliaments were faced with a situation in which approval was the only possible outcome because the protocols had already been negotiated and agreed in the Council.

The institutional development of Europol will be completed with the implementation of the relevant provisions of the Treaty of Lisbon, particularly those regarding the involvement of national parliaments and the European Parliament on the political

control of the agency. In light of this future rule changes, a number of initiatives have been discussing the future control of Europol and various interparliamentary practices have already taken place. Of particular relevance are the networking initiatives, the COSAC meetings, and the parliamentary meetings between national parliaments and the EP.

Networking Initiatives

The work done by the national parliaments' offices at the EP premises in Brussels is perhaps one of the most successful initiatives regarding parliamentary cooperation. According to those interviewed for this research, representatives in Brussels establish regular formal and informal contact among themselves and with EP officials. There is also an incipient practice of circulating information via email regarding the scrutiny done in other parliaments. These emails are mainly intended to provide information to other national parliaments regarding the intention of other national parliaments to raise concerns over the issue of subsidiarity on proposals from the Commission. However, this is an interesting development that could be used in the future in the case of the scrutiny of Europol. Some parliaments are indeed demanding something along these lines in order to exchange information 'in real time' (European Parliament, 2009e:pt13). COSAC – the Conference of European Affairs Committees– a forum that brings together members of European Affairs Committees of all national parliaments and also representatives of the EP, has investigated in one of its biannual reports the improvements required 'to support real-time information exchange between Parliaments' (COSAC, 2010b: 6) but so far no concrete measures have been implemented.

The electronic platform IPEX, the Interparliamentary EU Information Exchange also offers possibilities for the exchange of information. IPEX has a database where parliaments can upload documents in order to share them with other parliaments. However, IPEX is mainly intended for the exchange of reports regarding the scrutiny of legal acts. This reduces its potential as an instrument for the exchange of non-legal act related information. Talking particularly about the scrutiny of Europol's legal framework, this research has found that 45% of the national chambers of the EU shared

via IPEX the report of the scrutiny they did on the Council Decision on Europol. Considering that not every chamber may have written a report this percentage is quite high. However, there is no evidence to suggest that these reports influenced the scrutiny of other parliaments. Moreover, interviews with MEPs, MPs and parliamentary officials suggest that the use of IPEX is rather limited, which dismisses the potential influence that information shared in IPEX could have in the scrutiny work of parliaments. This finding is similar to the results of the analysis of debates and reports in which IPEX was mentioned carried out in this research, which showed little evidence of information being retrieved from IPEX in order to inform the scrutiny of parliaments.

COSAC, the Conference of European Affairs Committees

National parliaments have used COSAC –the Conference of European Affairs Committees– as a forum to express and discuss their views. In this regard COSAC is an important forum for interparliamentary cooperation. Evidence presented in this thesis shows national parliaments’ commitment to COSAC revealed by the fact that every national parliament sends a delegation to COSAC meetings and by the high level of responses to the questionnaires that the secretariat of COSAC sends to every national parliament in order to compile its biannual reports. These reports mainly serve as tools for the exchange of best practice regarding the scrutiny of EU affairs. Although it is possible that the sharing of these practices has influenced the scrutiny done in different parliaments, this research has found little evidence to support this claim. However, this research has found evidence of national parliaments using these reports in order to express their views on the future of parliamentary cooperation regarding the parliamentary control of Europol. Technically, the potential of COSAC to establish itself as the forum around which parliamentary cooperation for the parliamentary control of Europol would be arranged is high. The Lisbon Treaty provides for it to address any contribution on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the Area of Freedom, Security and Justice (AFSJ), and questions regarding fundamental rights (TEU Art.69). Also Protocol No.1 of the Lisbon Treaty gives COSAC’s role an official function with regard to the exchange of information and good practice between parliaments and extends that role to ‘specialized committees’. It also provides for COSAC to ‘organise interparliamentary

conferences on specific topics' (TEU Art.10 Protocol No.1). This opens the door for specific interparliamentary cooperation between sectoral committees of Justice and Home Affairs related to Europol to take place in COSAC. However, some parliaments, including the EP, are not convinced that COSAC is the right forum for the scrutiny of Europol and consider that COSAC should remain simply as a forum for the exchange of good practice. These parliaments would rather prefer a forum like the Joint Committee Meetings organised between the EP's sectoral committee dealing with Justice and Home Affairs, the LIBE Committee, and its corresponding committees in national parliaments.

Joint Meetings of Committees of the EP and National Parliament

H3 suggested that powerful actors such as the EP's Committee on Civil Liberties (LIBE) and its secretariat have managed to influence the form cooperation in this field has taken. This thesis has presented some evidence to suggest that the EP is trying to push for this type of fora by offering secretarial support and the premises for these types of fora, and also by starting to hold these Joint Committee Meetings in order to present the practice as already established in the future.

Due to its sectoral nature these meetings have the good potential to become a forum for interparliamentary control. However, two main problems have been identified, First, the legal basis for parliamentary scrutiny to take place in such fora is not ready yet. Second, Members attending these meetings vary frequently. Nevertheless, the trust in the work of the LIBE Committee and its secretariat has led some parliaments to believe that these meetings could be the way forward. However, this research has found evidence to suggest that other options may also be considered. For instance in a similar move to the LIBE Committee, COSAC has discussed the monitoring of Europol repeatedly since 2008 and COSAC secretariat has explored the potential of that option in four of its biannual reports (cf. COSAC 2009a; 2009c; 2010a; 2010c). However, despite this movement this research argues that the key forum for interparliamentary cooperation in this area will not be COSAC: but rather another institution where the weight and influence of the EP would be higher for, at the end of the day, the regulation that

would formally define the way joint parliamentary control takes place has to be approved by the EP.

In conclusion, this thesis has shown that interparliamentary activities have increased since the entry into force of the Lisbon Treaty. However, the extent to which these activities serve the purpose of parliamentary scrutiny seems to be rather limited. Interparliamentary cooperation seems to be reduced to the exchange of good practices for which COSAC and its bi-annual reports in particular, seem to be the preferred option.

CONCLUSIÓN EN ESPAÑOL

Establecido por la Convención Europol -una convención internacional- Europol fue originalmente un organismo intergubernamental. El control parlamentario se realizaba de manera indirecta por los parlamentos nacionales a través del escrutinio de los ministros que se asistían al Consejo de Justicia y Asuntos de Interior. Sin embargo, el Consejo no supervisaba directamente las actividades de Europol y la capacidad de los parlamentos nacionales para obtener información acerca de Europol era bastante limitada. Sin ningún tipo de acuerdo formal para el escrutinio directo el PE carecía de las competencias para equilibrar el déficit de los parlamentos nacionales. Sin embargo en 2010 Europol pasó a ser una agencia de la UE lo cual permite al PE, entre otras cosas, un cierto grado de control sobre el presupuesto de Europol. Además el Tratado de Lisboa prevé que la supervisión política de Europol se lleve de manera conjunta por los parlamentos nacionales y el Parlamento Europeo (TFUE. Art. 88). En este contexto, esta tesis ha analizado la evolución del control parlamentario de Europol como un caso de estudio del desarrollo institucional dentro de las instituciones democráticas de representación de la UE. La forma que tendrá el control parlamentario de Europol aún no se ha decidido. Sin embargo, los cambios en las prácticas parlamentarias ya han tenido lugar como preparación para la nueva modalidad en la que tanto los parlamentos nacionales como el Parlamento Europeo estarán involucrados. Con el estudio de estas prácticas incipientes hemos intentado dar respuesta a la siguiente pregunta ¿Cuál es la mejor manera de ponderar la participación de los parlamentos nacionales y del Parlamento Europeo en el control parlamentario de una agencia Europea como es Europol?

Esta tesis ha hecho un análisis detallado de la relativa relevancia de la cooperación interparlamentaria en comparación con un aumento del papel de control del Parlamento Europeo en el proceso de incorporación institucional de Europol. Se ha demostrado que si bien la cooperación interparlamentaria como solución al déficit de control parlamentario ha estado en la agenda cada vez que se ha modificado el marco jurídico de Europol esta solución nunca se ha puesto en práctica optando por el contrario por un aumento del control parlamentario del Parlamento Europeo. Esto puede explicar en

parte el escaso desarrollo de prácticas interparlamentarias de control. Este análisis coincide con la información obtenida en las entrevistas, en las que se mencionaba la falta de voluntad política como la razón principal para el escaso desarrollo de iniciativas interparlamentarias en este campo.

En 2001 en la primera conferencia interparlamentaria sobre el control democrático de Europol el Parlamento holandés sugirió la creación de Parlopol, una red de parlamentarios nacionales y eurodiputados para el intercambio de información. El objetivo de esta iniciativa era reducir la falta de información a la que se enfrentaban los parlamentos nacionales en relación a Europol. Sin embargo, Parlopol sólo se reunió dos veces. En 2002 la Comisión Europea propuso la creación de una comisión mixta de diputados y eurodiputados para la supervisión de Europol. Al parecer bien recibida, esta propuesta se incluyó en los primeros borradores del llamado Protocolo danés propuesto en 2002 como enmienda al Convenio Europol. Sin embargo, la propuesta no fue incluida en la versión sobre la que se alcanzó el acuerdo en diciembre de 2002. La creación de un comité parlamentario conjunto para supervisar Europol se sugirió otra vez en 2006, durante la redacción de la Decisión del Consejo sobre Europol, el marco legal que sustituyó al Convenio de Europol en enero de 2010 e hizo de Europol una agencia de la Unión Europea. Sin embargo, de nuevo esta vez la propuesta no se incluyó en el acuerdo final. Pero ello no quiere decir que la idea de un control interparlamentario se haya desechado. De hecho, el debate sobre el control interparlamentario de Europol sigue vivo. Europol se convirtió en una agencia de la UE en enero de 2010 – antes de la entrada en vigor del Tratado de Lisboa – por ello la base jurídica de Europol deberá ser modificada de nuevo para adaptarse a las exigencias del Tratado de Lisboa, entre las cuales está la supervisión por de Europol por parte del Parlamento Europeo y de los parlamentos nacionales de manera conjunta (TFUE ART.88).

El estudio de la evolución del control parlamentario de Europol nos permite estudiar por qué y cómo se desarrollan las prácticas interparlamentarias y por qué éstas toman una forma y no otra. La H1 sugería que debido a la imposibilidad tanto por parte del Parlamento Europeo como de los parlamentos nacionales para proporcionar por sí solos

un control parlamentario adecuado sobre Europol, surgirían prácticas interparlamentarias para mejorar ese control. Sin embargo en esta tesis se demuestra que fue precisamente la reforma en el control parlamentario de Europol producto de la transformación de Europol en una agencia de la Unión Europea, es decir bajo un control más estricto del Parlamento Europeo (al menos de manera formal), la que estableció las bases para el desarrollo de prácticas interparlamentarias de control. En las primeras etapas del desarrollo de Europol, el PE estaba preocupado en mejorar sus propias competencias de control parlamentario. La acción de otros actores (en este caso los parlamentos nacionales) se percibe más bien como una amenaza para la posición del PE como garante del control parlamentario a nivel Europeo. Esta investigación ha encontrado que, en cierta medida, esta percepción existe aún para algunos eurodiputados y podría ser una de las cuestiones que podrían influir en el desarrollo (o no desarrollo) de ciertos tipos de prácticas interparlamentarias. Posteriormente, cuando Europol dejó de ser una agencia intergubernamental para transformarse en una agencia de la Unión Europea, el discurso del PE en materia de cooperación interparlamentaria cambió. Por ello, es difícil afirmar que el desarrollo de prácticas interparlamentarias, en el caso del control parlamentario de Europol, se haya debido a la búsqueda de soluciones a la imposibilidad tanto por parte del Parlamento Europeo como de los parlamentos nacionales para proporcionar por sí solos un control parlamentario. Hasta la incursión de Europol en la Unión Europea el Parlamento Europeo se expresaba en los siguientes términos: ‘como un órgano europeo, Europol debe ser controlado por otro órgano europeo –Parlamento Europeo– y no por los parlamentos nacionales’ (Parlamento Europeo, 2002a). Después, por el contrario, en su resolución de 25 de noviembre de 2009, el Parlamento Europeo pidió a la Comisión que presentase una propuesta legislativa sobre la participación del Parlamento Europeo y los parlamentos nacionales en la evaluación de las agencias del ELSJ (Espacio de Libertad Seguridad y Justicia), incluido Europol (Parlamento Europeo, 2009e:pt.148). Esto confirma los resultados de investigaciones anteriores que sugerían que el principal objetivo de los Parlamentos para la participación en prácticas interparlamentarias no es necesariamente el deseo de aumentar su capacidad de control parlamentario (Larhant, 2005).

Estudios previos sobre la cooperación parlamentaria sugirieron que la lógica de la cooperación es que logra los intereses de todos los actores (Westlake, 1995). La *H2* sugería que el desarrollo de prácticas interparlamentarias seguiría solamente si éstas promovía los intereses tanto del PE como de los parlamentos nacionales. Como se ha demostrado, las sucesivas reformas del marco jurídico de Europol (como agencia intergubernamental) no incluyeron órganos interparlamentarios en los que estarían presentes tanto los parlamentos nacionales como el Parlamento Europeo a pesar de su potencial para solventar los problemas de control de la agencia. En las sucesivas reformas no se aprecia un especial interés de los parlamentos nacionales por establecer órganos de control interparlamentarios que rompan la asimetría de información en la que se encuentran los parlamentos nacionales cuando realizan un eventual control parlamentario de los ministros de justicia e interior como único control parlamentario de la actividad de Europol. Muy probablemente un aumento en las tareas que se realizan a nivel de la UE, que la creación de las estructuras de supervisión de Europol hubiera implicado, no era algo en lo que los parlamentos nacionales tuviesen especial interés. Pero los resultados presentados en esta tesis con respecto a este punto son contradictorios. Los eurodiputados, parlamentarios y funcionarios parlamentarios entrevistados en esta investigación están de acuerdo en el escaso interés que el escrutinio de los asuntos de la UE genera en los parlamentos nacionales. Pero los mismos funcionarios parlamentarios y diputados mencionaron que los parlamentos nacionales están muy interesados en la configuración del futuro desarrollo de la cooperación interparlamentaria y que la cuestión de la participación de los parlamentos nacionales en el control de Europol se ha seguido con interés. Como ejemplo, un funcionario parlamentario mencionó la actual ronda de consultas que la Comisión ha iniciado, en vista de que tiene una propuesta que definirá, entre otras cosas, la forma en que finalmente se llevará a cabo el control parlamentario de Europol. La Comisión sugirió una reunión de trabajo con algunos parlamentos nacionales en nombre de todos los parlamentos nacionales y los parlamentos nacionales no aceptaron ya que todos ellos querían estar presentes (entrevista personal con la Sra. Carmen Sánchez- Abarca Gornals, Representante del Parlamento español, octubre de 2010). Por otra parte, la Decisión del Consejo sobre Europol, mediante la cual Europol se incorporó a la Unión Europea, satisfizo la mayor parte de las demandas del PE y esta investigación no ha

encontrado evidencia alguna que sugiera que los parlamentos nacionales se opusiesen al creciente incremento del poder de control parlamentario por parte del Parlamento Europeo en detrimento del *status quo* en el que los únicos órganos de control parlamentario eran los parlamentos nacionales (si bien de manera indirecta mediante el control parlamentario de sus ministros de Justicia e Interior). Además hay que señalar que el Tratado sólo se refiere al desarrollo de los futuros reglamentos de "establecer los procedimientos para el control de las actividades de Europol por el Parlamento Europeo, junto con los parlamentos nacionales" (TFUE ART.88 (2b)). Esto debe hacerse de acuerdo con el denominado procedimiento legislativo ordinario (anterior codecisión) en la que el Consejo y el PE son colegisladores. Esto implica que la institucionalización de las prácticas interparlamentarias para el futuro control conjunto de Europol tendrá que contar con el apoyo del Parlamento Europeo.

¿Cómo explicar pues la inclusión de los parlamentos nacionales en el control parlamentario de Europol? ¿Y por qué esta ha tomado una forma concreta y no otra? Como algunos eurodiputados mencionaron durante este estudio, la inclusión de los parlamentos nacionales proporciona un argumento contra aquellas preocupaciones relacionadas con que la UE pudiese convertirse en un súper-estado y podría haber sido la única forma de avanzar hacia una mayor integración. En este sentido, la coordinación parlamentaria puede entenderse como un efecto secundario del aumento del papel de control del Parlamento Europeo. En cierto modo se confirma la hipótesis ya expresada por Westlake (1995) según el cual, la participación de los parlamentos nacionales en la UE y algunas de las prácticas interparlamentarias que surgieron con ella se deben al intento por parte del PE de reforzar su papel en el proceso legislativo, mientras que los parlamentos nacionales trataron de aumentar su control sobre el PE. Por otro lado, a pesar de los numerosos debates sobre la necesidad de mejorar el control parlamentario de Europol, la necesidad real de mejorarlo no se hizo acuciante hasta que Europol se convirtió en una agencia de la UE de pleno derecho. Así el control parlamentario de Europol ha evolucionado en consonancia con el papel de la agencia. Esta idea ya fue expresada en 2001 en La Haya durante la primera reunión parlamentaria para discutir el control democrático de Europol. Allí, el señor Hugo Coveliers, al momento miembro de la Cámara de Representantes de Bélgica, advirtió que 'el control parlamentario sobre el

nacional o europeo nivel sería diferente en función de las tareas de Europol' (Dutch Senate 2002).

La inclusión de los parlamentos nacionales de manera flexible sin crear nuevas estructuras a nivel europeo ha sido la solución que satisface a los parlamentos nacionales y al Parlamento Europeo. Por un lado, este sistema tendría la ventaja de dejar al Parlamento Europeo como máximo órgano representativo-democrático de la Unión a la vez de no aumentar el número de jugadores con veto en un sistema de toma de decisiones ya engorroso como la UE. Por otro lado, los parlamentos nacionales quedan incluidos a nivel de la UE sin necesidad de invertir excesivos recursos y con la ventaja de poder beneficiarse del análisis del Parlamento Europeo con su enfoque a tiempo completo en el control parlamentario de la UE. Si bien el nuevo sistema supone una pérdida de poder por parte de los parlamentos nacionales, no hay evidencia empírica que permita sugerir que estos se negasen a la inclusión de Europol en la UE. Una posible explicación es que el *status quo* no era satisfactorio. A pesar de tener un papel formal de ratificación de los protocolos para modificar la Convención de Europol, los parlamentos nacionales se enfrentaban a una situación en el que la aprobación era básicamente el único resultado posible debido a que los protocolos ya habían sido negociados en el Consejo. La evolución de Europol se completará con la aplicación de las disposiciones relevantes al respecto en el Tratado de Lisboa, en particular las que se refieren a la participación de los parlamentos nacionales y el Parlamento Europeo en el control político de la agencia. A la luz de este futuro cambio de reglas, una serie de iniciativas han discutido el futuro el control parlamentario de Europol y varias prácticas interparlamentarias han tenido ya lugar. De especial relevancia son las iniciativas de redes, las reuniones de la COSAC y las reuniones interparlamentarias entre los parlamentos nacionales y el PE.

Iniciativas de Redes

El trabajo realizado por las oficinas de los parlamentos nacionales en la sede del PE en Bruselas es quizás una de las iniciativas más exitosas en este sentido. De acuerdo con los entrevistados para esta investigación, los representantes en Bruselas establecen contactos formales e informales regulares entre ellos y con funcionarios del PE.

También ha surgido recientemente la práctica de difundir información a través de correo electrónico sobre el escrutinio realizado en otros parlamentos. Estos correos electrónicos tienen como objetivo principal proporcionar información a todos los parlamentos en relación con la intención de un parlamento de plantear cuestiones de subsidiariedad a las propuestas de la Comisión. Este es un desarrollo interesante que podría ser utilizado en el futuro en el caso de escrutinio de Europol u otras agencias. De hecho algunos parlamentos exigen algo en este sentido con el fin de intercambiar información ‘en tiempo real’ (Parlamento Europeo, 2009e:pt13) para el control parlamentario de Europol. La COSAC - la Conferencia de Órganos Especializados en Asuntos Europeos - un foro que reúne a los miembros de comisiones de asuntos europeos de los parlamentos nacionales y también representantes del Parlamento Europeo, ya ha investigado en uno de sus informes bianuales las mejoras necesarias ‘para apoyar el intercambio de información en tiempo real entre los parlamentos’ (COSAC, 2010b:6) pero no se han tomado medidas concretas todavía.

La plataforma electrónica IPEX (Intercambio de Información Interparlamentaria en la UE) también ofrece posibilidades para el intercambio de información. IPEX tiene una base de datos donde los parlamentos pueden subir documentos con el fin de compartirlas con otros parlamentos. Sin embargo, IPEX se destina principalmente al intercambio de informes sobre el control de actos jurídicos. Esto minimiza su potencial para el control parlamentario de una agencia como Europol. De todos modos, esta investigación ha encontrado que el 45 % de las cámaras nacionales de la UE compartió a través de IPEX el informe del escrutinio que hicieron del acto jurídico que transformó Europol en una agencia de la UE. Teniendo en cuenta que no todas las cámaras realizaron un informe, este porcentaje es bastante alto. Sin embargo, no hay evidencia que sugiera que estos informes influyeron en el escrutinio de esta Decisión del Consejo por parte de otros parlamentos. Es más, las entrevistas con eurodiputados, parlamentarios y funcionarios parlamentarios sugieren que el uso de IPEX es bastante limitado y además el análisis de los debates e informes parlamentarios en los parlamentos estudiados demuestra que la información compartida en IPEX tiene una influencia muy limitada en el escrutinio de otros parlamentos.

La COSAC, la Conferencia de los Órganos Especializados en Asuntos Europeos

Los parlamentos nacionales han utilizado la COSAC, la Conferencia de los Órganos Especializados en Asuntos Europeos como un foro para expresar y discutir sus puntos de vista. En este sentido la COSAC es un foro importante para el desarrollo de prácticas interparlamentarias. La evidencia presentada en esta tesis muestra el compromiso de los parlamentos nacionales con la COSAC revelado por el hecho de que cada parlamento nacional envía una delegación a las reuniones de la COSAC y por el alto nivel de las respuestas a los cuestionarios que la secretaría de la COSAC envía a cada parlamento nacional con el fin de compilar su informe bianual. Estos informes sirven principalmente como herramientas para el intercambio de las mejores prácticas en relación con el examen de los asuntos de la UE. Aunque es posible que el intercambio de estas prácticas haya influido en el escrutinio realizado en diferentes parlamentos, esta investigación ha encontrado poca evidencia para apoyar esta afirmación. Sin embargo, esta investigación ha encontrado pruebas de que los parlamentos nacionales utilizan estos informes con el fin de expresar sus puntos de vista sobre el futuro control parlamentario de Europol y el desarrollo de prácticas interparlamentarias para implementar las disposiciones del Tratado de Lisboa al respecto. Técnicamente, la COSAC tiene potencial para consolidarse como el foro en torno al cual se organizaría el control parlamentario de Europol del cual participarían los parlamentos nacionales y el Parlamento Europeo. Entre otras cosas, el Tratado de Lisboa prevé que la COSAC pueda realizar contribuciones sobre las actividades legislativas de la Unión, en particular en relación con la aplicación del principio de subsidiariedad, el espacio de libertad, seguridad y justicia (ELSJ), y las cuestiones relativas a los derechos fundamentales (TUE Art. 69). Así mismo, el Protocolo No.1 del Tratado de Lisboa, da a la COSAC una función oficial en relación con el intercambio de información y buenas prácticas entre los parlamentos y extiende ese papel a las llamadas ‘comisiones especializadas’. También prevé que la COSAC pueda organizar ‘conferencias interparlamentarias sobre temas concretos’ (Protocolo Art.10 TEU No.1). Esto abre la puerta para la cooperación interparlamentaria específica entre los comités sectoriales de Justicia y Asuntos de Interior que podrían celebrar reuniones temáticas sobre Europol (u otras agencias) en el seno de la COSAC. Sin embargo, algunos parlamentos, incluidos el Parlamento Europeo, no están convencidos de que la COSAC

sea el foro adecuado para el control de Europol y consideran que la COSAC debe permanecer como un foro para el intercambio de buenas prácticas. Estos parlamentos prefieren un foro como las reuniones conjuntas de comisiones organizadas entre la comisión sectorial de PE que trata Justicia y Asuntos de Interior (la Comisión LIBE) y sus comités correspondientes en los parlamentos nacionales.

Reuniones Conjuntas de Comisiones del Parlamento Europeo y de los parlamentos nacionales

La *H3* sugería que actores importantes, como la comisión LIBE del Parlamento Europeo y su secretaría han logrado influir en la forma en que las practicas interparlamentarias han ido desarrollándose en este área. En esta tesis se han presentado datos que sugieren que el PE está tratando de impulsar las reuniones conjuntas de comisiones sectoriales de los parlamentos nacionales y su correspondiente comisión en el Parlamento Europeo ofreciendo apoyo de secretaría y las instalaciones para este tipo de foros con el fin de presentar la práctica como ya establecida en el futuro.

Debido a su carácter sectorial estas reuniones tienen un potencial enorme para convertirse en un foro para el escrutinio interparlamentario. Sin embargo, se han identificado dos problemas principales. Por un lado, la base legal para que el control parlamentario tenga lugar en tales foros aún no está lista. Pero más importante es el hecho de que los diputados que asisten a estas reuniones varían con frecuencia. De todos modos, la confianza en el trabajo de la Comisión LIBE y su secretaría ha llevado a algunos parlamentos a creer que este podría ser el camino a seguir, pero esta investigación ha encontrado pruebas que indican que también otras opciones pueden todavía considerarse. Por ejemplo, en una estrategia similar a la de la Comisión LIBE, la COSAC ha discutido la supervisión de Europol en varias ocasiones desde 2008 y la Secretaría de la COSAC ha explorado el potencial de la COSAC como órgano interparlamentario en torno al cual se realice el escrutinio de Europol en al menos cuatro de sus informes bianuales (cf. COSAC 2009a; 2009c; 2010a; 2010c). Sin embargo, a pesar de estos movimientos esta investigación sostiene que el principal foro para la cooperación interparlamentaria en esta área no será la COSAC: sino otra institución donde el peso y la influencia de la PE sea mayor ya que al fin y al cabo la

regulación que establecerá formalmente cómo se realiza el escrutinio conjunto de Europeo ha de ser aprobado por el Parlamento Europeo.

En conclusión, esta tesis ha demostrado que las actividades interparlamentarias han aumentado desde la entrada en vigor del Tratado de Lisboa. Sin embargo, el grado en que estas actividades sirven para el control parlamentario parece ser bastante limitado. La cooperación interparlamentaria parece reducirse al intercambio de buenas prácticas para lo cual la COSAC, y en particular sus informes semestrales, parecen ser la opción preferida.

APPENDIX A INTERVIEWS

Interviewees

What follows is the list of interviewees, with reference to responsibilities, and to when and where the interview took place:

Mr. Ed Lock

Representative of the House of Lords in Brussels
15 January 2010, European Parliament, Brussels

Ms. Beatrice Gianani

Representative of the Italian Senate in Brussels
5 October 2010, European Parliament, Brussels

Ms. Libby Kurien

Representative of the UK House of Commons in Brussels
5 October 2010, European Parliament, Brussels

Mr. Jan Nico van Overbeeke

Representative of the Dutch parliament in Brussels
5 October 2010, European Parliament, Brussels

Mr. Peter Juul Larsen

Representative of the Danish Parliament in Brussels
6 October 2010, European Parliament, Brussels

Ms. Patrizia Prode

Head of Legislative Dialogue Unit
(European Parliament General Directorate for Relations with National parliaments)
6 October 2010, European Parliament, Brussels

Ms Carmen Sánchez-Abarca Gornals

Representative of the Spanish parliament in Brussels
6 October 2010, European Parliament, Brussels

Mr Krzysztof Bernacki

Head of Institutional Cooperation Unit
(European Parliament General Directorate for Relations with National parliaments)
7 October 2010, European Parliament, Brussels

Ms. Eszter Fay

Administrator at the European Parliament
(General Directorate for Relations with National parliaments)
7 October 2010, European Parliament, Brussels

Ms Loreta Raulinaitytė
Permanent Member of the COSAC Secretariat
7 October 2010, European Parliament, Brussels

Mr. Josep Maria Ribot
Administrator at the European Parliament
(General Directorate for Relations with National parliaments)
7 October 2010, European Parliament, Brussels

Mr Emilio De Capitani
Head of Unit of the Secretariat of the LIBE Committee
8 October 2010, European Parliament, Brussels

Lord Bowness
Member of the European Affairs Committee of the House of Lords
18 October 2010, UK House of Lords, London

Ms. Sophia In 't Veld, MEP
Vice-Chair of the LIBE Committee
19 October 2010 via Skype

Mr. Agustín Díaz de Mera, MEP
Member of the LIBE Committee, Rapporteur of the Council Decision on Europol
8 November 2010, European Parliament, Brussels

Mr. Juan Fernando López Aguilar, MEP
Chair of the LIBE Committee of the European Parliament
9 November 2010, European Parliament, Brussels

Interviews Typescripts

Mr. Ed Lock
Representative of the House of Lords in Brussels

Date and place of interview: 15 January 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Mr. Lock. Now, what is the number of meetings a representative of national parliament has in Brussels with other representatives in Brussels?

Ed Lock: We have a formal meeting once a week. But there are lots of informal meetings. National representatives have the offices in the same floor at the EP building. It is common then to simply go to the office of another representative in order to ask something needed.

DRG: Have the possibilities that the Lisbon Treaty offers for parliamentary scrutiny of Europol been discussed in these formal and informal meetings?

EL: Yes, the issue has been discussed but there is nothing agreed. This issue was also discussed in COSAC. The general feeling is that national parliaments are waiting for the Commission to put forward a proposal. It is very difficult for national parliaments to show their position without having an idea of what the Commission is offering.

DRG: There is no agreed position between national parliaments of what they would like?

EL: The position of the House of Lords is that there is no need for a joint committee. There is a feeling that a joint committee would be not effective and expensive. Also a joint committee would lose a lot of time discussing a text that national parliaments could agree on. The House of Lords would like something more flexible.

[Off the record: Ideally the House of Lords would like to be able to continue doing a scrutiny similar to what they have been doing i.e. being able to invite the Europol Director and the commissioner to committee meetings and writing a report. Then the report could be feed into a centralised system in Brussels, something similar to IPEX, where every chamber would be able read each other reports and share information.]

DRG: Would COSAC have a role on that?

EL: Yes, COSAC might have a role for that

DRG: Is IPEX used?

EL: Yes it is.

DRG: Is it useful?

EL: Yes it is. We cannot expect people doing the scrutiny to be looking at IPEX all the time. When a representative of a national parliament in Brussels finds something important this is communicate to their colleagues who then report to national capitals for specialist there to be aware.

DRG: Do you attend Joint Parliamentary Meetings and/or Joint Committee Meetings?

EL: Yes, if they are in Brussels. When the meetings are in Strasbourg attendance depends on budget and the agenda. When the meetings are in national chambers it is more frequent for specialist from national capital to attend the meeting.

DRG: Are these meetings useful?

EL: It depends on the agenda but in general they are useful.

DRG: Do these meetings finish with a final declaration or a binding resolution?

EL: In general there is no binding resolution or final declaration. This will be time consuming and this is not the aim of these meetings. The important thing of these meetings is to be able to share opinions. These meetings are also an opportunity for national parliaments to put forward their views to the EP and the Commission and to influence the legislation-making process.

DRG: The Lisbon Treaty offers national parliaments the possibility to scrutinise Europol together with the EP. This needs to be regulated by the EP and the Council. In November 2009 there was a Joint Parliamentary Meeting on the Stockholm Programme in which this issue was on the agenda. Was it discussed?

EL: Yes it was. But no binding resolution was passed.

DRG: What else has been done regarding the future regulation?

EL: There has been a meeting with national ministers of interior affairs and with Catherine Day (Sec Gen of the Commission) in which national parliaments' representatives asked the Commission to put forward a proposal. The answer was that there will be a proposal soon but first the Commission needs to be formed. There was not date given.

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Ms. Beatrice Gianani

Representative of the Italian Senate in Brussels

Date and place of interview: 5 October 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Ms. Gianani. Now, what are the characteristics of the European Scrutiny?

Beatrice Gianani: The Senate tries to do a constructive control. The special thing about the parliamentary control of JHA issues at national parliaments is that there are no lobby groups. So national parliaments are those that are going to represent the rights of citizens.

DRG: Before whom? Before the Commission. This is also the role of the EP isn't it?

BG: The objective of parliamentary control in this area is to find out how can these European agencies be of use.

DRG: What type of control do national parliaments want?

BG: One that is useful.

DRG: What has been the work of the Italian senate on Europol?

BG: It has done very little. Although this is a chamber that is totally pro-Europol and pro-parliamentary control.

DRG: It has done some 'relazioni' every year. Very bureaucratic activity.

BG: Actually the focus has been on migration, for political reasons, and the activities related to Europol have been shifted to the committee of Justice. The new law will do that.

DRG: In order to implement the Treaty idea is that MPs from the Justice committee would take part on the JPM. There is a feeling that the EP wants to control these meetings. This is a way ok because they have more power but what it should be possible is to have a say on the agenda (this has also been mentioned by the Spanish representative).

BG: The Italian Senate is trying to build up specialisation by having always the same members attending to the meetings.

DRG: What the Italian Senate would like to see are two committees a year with NP/EP Justice and Home Affairs. In Brussels and in the capitals.

BG: They would like to decide the agenda together. They trust the LIBE Committee. Here the human factor plays an important role because the Secretariat of the LIBE Committee is being nice to them. There will be a meeting at COSAC in October and another one organised by the presidency in spring. The Senate is also expecting to organise an informal meeting with other parliaments

DRG: Why did they not work before on the issue?

BG: Because the issue of the ratification of the Lisbon Treaty was not clear.

DRG: There is a problem with cooperation because every parliament is different and they all have their demands.

BG: The Italian problem is cultural. They are very pro-EU. But there is a problem with language. Also Europe is in the hands of the government. For years the parliament has renounced to control. But now is willing to do it.

DRG: They have little resources. The Germans have 15 people in Brussels. The Senate has one. They have four civil servants between Rome and Brussels.

BG: The Camera has more resources.

DRG: Yes the Senate understands cooperation as way to increase parliamentary control.

BG: There is no feel of distrust with the EP and there is the acknowledgment that they know more.

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Ms. Libby Kurien

Representative of the House of Commons in Brussels

Date and place of interview: 5 October 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Ms. Kurien. Now, let's talk about the nature of the scrutiny.

Libby Kurien: The European scrutiny of the House of Commons is investigative in nature. The good thing about the system is that it can do in-depth enquiries. The Justice Affairs Committee has taken evidence from the Europol Director.

DRG: Scrutiny of Europol

LK: The House of Commons has not issued any opinion regarding the need to improve the scrutiny of Europol. But now they have an interest on making the future system work. They are therefore waiting for the proposal of the commission. They have not yet revised their system and they are waiting to do so when the commission would make the proposal. The idea that there was not need to have strong control because the agency actually did not have so many powers is one that many members of the House of Commons would buy.

DRG: Future of cooperation regarding Europol

LK: The preferred format is Joint Committee Meetings. No big bureaucratic structures. COSAC is not considered as the appropriate forum. The leading role of the EP in a JCM is clear. Well they are chaired also by the parliament holding the Presidency. In any case national parliaments understand the leading role of the EP on the scrutiny of EU bodies. These meetings are a good formula for information sharing. Not for the coordination of scrutiny because every parliament is sovereign. Parliamentarians are aware that EP knows better so they know it is good to meet with them.

DRG: Regarding IPEX

LK: It could be a good way for sharing of informal information but it is very difficult to make national parliamentarians make use of it.

DRG: Is cooperation understood a way of improving parliamentary control or is more a burden?

LK: Cooperation understood as sharing best practice on how to better scrutinise. Is not considered a burden.

DRG: General Cooperation

LK: There are no formal structures for MEPs and MPs to meet. But there are informal structures. There is a meeting of MEPS and MPs of the European Scrutiny Committee. They meet three times a year. The issue of Europol is being discussed in this forum. MEPs have no free access to the House of Commons. They have access only if they are invited. In the House of Lords they have access.

DRG: Has the scrutiny of Europol done at the House of Commons being redefined?

LK: No. Waiting for the Commission proposal.

DRG: Why is the Commission delaying the proposal until 2013?

LK: No idea.

DRG: Should scrutiny of the Europol being improved?

LK: Scrutiny should be adequate.

DRG: Before the House of Commons wanted to create a joint committee, now is said that now structures are wanted. Why?

LK: We already have joint committees. Joint Committee would be at no extra cost.

DRG: What is your opinion of your parliament's level of participation in parliamentary cooperation?

LK: Limited participation. It is very difficult for MPs to leave Westminster. Parliament sits every day.

DRG: What is your opinion regarding the resources of your parliament to effectively take part on parliamentary cooperation?

LK: It is a well-resourced parliament. There is a large team at the Secretariat of the European Scrutiny Committee. There are about 12 people working for the Secretariat half in administration task and half in as political advisers. This is about twice the size of other committees.

DRG: If the House of Commons are doing so little on the control of Europol, why just not handing it over to the EP?

LK: Because it is aware of its constitutional right. European Scrutiny Committee wants to do it.

DRG: In the case of Joint Committee Meetings who will be attending the meeting if it is for Europol?

LK: Justice and ESC could both attend. There can be three people. There won't be competition because not so many want to attend. There was no member wanting to attend today's meeting. They will be representing the Committee's view not the parliament's view.

DRG: Members are entitled to visit the EU institutions do they use that right?

LK: Not every member.

DRG: In the House of Commons there is controversy about the EU. So they do not look at the merits of the legislation.

LK: The house of Lords EAC is more Europhile. Especially the composition of their members. For the House of Commons there is mix of everything. The general Europhobia makes that the House is more aware of the scrutiny and wants to do it right. It is one of the most comprehensive scrutiny systems in Europe. It does not neglect its duties. It defends its rights.

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Mr. Jan Nico van Overbeeke

Representative of the Dutch parliament in Brussels

Date and place of interview: 5 October 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Mr. van Overbeeke. Now, I have studied the control of the Netherlands. What are the main advantages of the system?

JNO: At the past we had a system for the control of everything that was in the third pillar. That was before the Lisbon Treaty. Where we concluded that there is a democratic deficit because there was not full control by the EP. So we decided to set up a special committee for scrutinising third pillar topics. That was kind of strict control by the parliament by both chambers of these dossiers. The Minister had to ask permit from the parliament to agree in the Council meetings on these issues. Now since the Lisbon Treaty there is a different situation so we do not have specific system in place for this. We continue for a while the old system but of course it is not as effective as before because there is no veto. This is the general picture of how we deal with JHA issues in the Dutch parliament. We have put in place another control system; I am talking in general terms now about, how we deal with the control of EU issues and EU cooperation. That is what we call parliamentary reserve. We have now indicated a number of issues that are priority for the Dutch parliament and where we have parliamentary reserve. That means that we are not going to enter into a mandate system but we will give the Minister two month time to discuss with the parliament how he will give information to the parliament on specific dossier and within this period he has to make a reserve in the Council meetings.

DRG: Is Justice and Home Affairs included?

JNO: Yes it is.

DRG: So the system has been rethought since the entry of the Lisbon Treaty

JNO: Yes, the system has been rethought and now we are starting implementing this new system but of course it is very recent. We do not know how exactly it will work. Regarding the control of Europol and Eurojust of course is now and agency so is not a topic for Council meetings or whatever. So we do not have a specific procedure for controlling Europol or Eurojust. Not yet in place. So we also have to see what the new parliament is now picking up. We unfortunately did not have any member in this meeting (referring to the meeting at the LIBE Committee) so this is also an indication that we do not have yet a specific message of the Dutch parliament to this system.

DRG: The Dutch parliament used to be very concern with the lack of parliamentary control of Europol. Actually it organised one of the first interparliamentary conferences on the topic.

JNO: Yes but this was almost ten years ago.

DRG: Can we say that with the changes and the role that the EP has now the Dutch parliament feels it is all in the hands of the EP?

JNO: Well I do not know. I notice initiative. They wanted to come to a kind of special body. That was the proposal in 2001. And I think this initiative did not come up the ground really. I think at that time we have a quite active Senate in this field. But it also depends on some persons within the Senate. I have the feeling that for the last years the focus has not been on the control of Europol and Eurojust it is more focus on last's say asylum migration these kinds of issues. There is general felling that we should be very careful in making more agencies etc. Of course the system of agencies is difficult to control. So as a general policy line we want to restrict the coming of new agencies but we do not have let's say at this moment very specific focus on agencies such as Europol and Eurojust as far as I know. But I can inform back home (ask him to do it) because I know better the situation in the House than in the Senate. I can check if you like recent developments in this area and how the committees are dealing with it. Because the general approach is that focus our activities from the European affairs committees to the specialized committees. So used to be much more centralized. Before everything was done by the European Affairs Committees and now there is a tendency to say no the committee of Justice is responsible for Justice etc. So for example subsidiarity of EU dossiers in the Senate before were in the EAC and now they give the dossiers directly to the specialized committees that they have to deal with it.

DRG: So could envisage that cooperation with the EP for the scrutiny of Europol would be done by the Justice committee and not by the EAC?

JNO: Yes, in principle yes. Of cause they cooperate. European Affairs Committee is much more coordinating but the content is being done by the Justice and Home Affairs Committee.

DRG: Does the parliament of the Netherlands have specific requirements? Some parliaments would like very informal cooperation and others would like structures.

JNO: First we wait for the proposal by the European Commission. So we do not have specific position taken already. We wait for the proposal of the commission and I think we have waited quite a lot time already. In general terms we do not want to create new institutions we want to use existing cooperation to deal with these issues. We should think of regular meetings between Justice and Home Affairs committees. Like the one that exist already organised by the presidencies. We are not in favour of let's saying COSAC kind of structure.

DRG: Why?

JNO: Because it is a general policy line that we do not want to create new institutions. We want to make existing cooperation more effective instead of creating new forms of cooperation. So I think we do not want to have more JPM but we want the already existing meetings to be focused on the specific topics and in general I must say that most of the meetings JPM it is more and more difficult to get Dutch MEPs off to Brussels to attend these meetings. Because they think they are too passive, it is a lot of information but it is difficult for MEPs to come over for maybe one and a half day conference and having two minutes to speak.

[He checked the website to find more information and asked me if I had problems because it is in Dutch.]

There is nothing new. The whole issue was more active in 2002 than it is now. And there is nothing happening now. I think there was a specific focus because it is in The Hague. They feel close by. Of course they support Europol as such but I what I see in the period after the referendum in the Netherlands we see a change on in the politicians that Europe is apparently not taken for granted. It is not something that everyone just agrees upon. Because it is just logical that you really cooperate in Europe. There was also a change in mentality that you can within the population but also on politicians. We can also see that ok with Europe I am not getting a lot of votes. So they see Europe, as something that have become a threat, maybe is a big word. It is going too fast and also with all these new countries coming in. They feel that they should be more critical of everything that has to do with Europol. Every new initiative or every new European cooperation should be considered something to be look at in a critical way.

DRG: In this sense do you think that the Dutch parliament feels that cooperation with other parliaments could help? Or is it more a burden?

JNO: Yes, cooperation with other parliaments for sure because we consider also this procedure of subsidiarity something inspired by the Dutch politics. That is why we want to continue doing this subsidiarity checks with other parliaments on the new proposals etc.

DRG: For cooperation, and specifically if there is the European Parliament involved, some people say that there is need for trust. And also need for learning to work together. Do you think there is general feel of trust between the Dutch parliament and the EP or is it more competition?

JNO: It depends. I cannot say in general there is trust or not. What I can see is that there is a wronging feeling that EP should not go too far in taking up its responsibilities. Because that is very actual now. There EP explicitly sees as the new task for the EP of course to take on board the national parliaments while the national parliaments we considered it national discussion of course national parliaments want to take the EP on board. So the question is who is taking the initiative and the EP is considering itself as one partner and at the other side the collective club of national parliaments. While national parliaments say it is our issue and EP delegation is number 28.

DRG: Yes. And in JHA?

JNO: Of course we endorse the Treaty. And the role of the EP in that field. But we will carefully watch where, especially asylum and migration will carefully look what is national responsibility and what is Europe. All the issues regarding asylum migration is under special attention by the parliament and if you see the new agreement of the new parliament so will see that there is a lot of attention. And they are looking at the borders between national and European competences.

DRG: What when the Treaty says together? Because in the case of Europol and Eurojust the Treaty says together.

JNO: Yes. It is very unclear in the Treaty and I think that is why we want to see first the proposal of the commission. I for myself think that we should better try to have the initiative of the national parliaments. And not wait for what the Commission comes up with. But so far the Danes are pushing. So you could talk to my Danish colleague. Because they are bringing again and again ok this is a joint responsibility and the Treaty says we should find common way of controlling. But as far as I know in the Dutch parliament there is no specific idea of how we should do it. The only general line is no new bodies like Secretariat and new instruments just cooperate use new ways of communication like videoconferences but not again meeting going from all Europe to Brussels.

DRG: This seems to be also the opinion of the EP.

JNO: The EP wants to concentrate it in the EP. The different between the EP and most national parliaments I think is where the initiative is. Who has the ownership of that control and I think the European Parliament takes it for granted that the ownership of that control is with the EP because they are a body directly elected by all citizens of Europe while national parliaments say well we have our own responsibilities so we want to decide what is our responsibility and of course we will communicate with the EP but we do not want to be in a hearing with the EP where they only ask our opinions and they decide what they will do. But I think if we look in reality the biggest power of the EP is the budgetary control.

DRG: And also the regulation

JNO: Exactly. That is also the problem of national parliaments. They look at it some time when they came here they look at it but when they are back home they look at other million of different issues. That is also the advantage of the EP. They are surrounded by the institutions, they have direct contact with the commissioners, and they see them. National parliaments look at it when they are here but most of the time they are back home.

DRG: But some parliaments follow Europe with great attention for instance the Danish parliament. Why?

There is stricter control in the Danish parliament with everything that has to do with Europe because they have a more mandate system than the one we have. They are more use to be a legislator. We in the Netherlands have more the tradition of parliamentary control. So government decides and parliament gives its consent afterwards.

DRG: Is the Dutch parliament well resourced for interparliamentary cooperation?

JNO: Yes. We participate in the existing fora like COSAC. We are in the Benelux assembly, NATO etc. But apart from these structures there is not a lot of contact with other parliaments. But this does not mean that there is no interest in interparliamentary cooperation. They see the office here as a tool for interparliamentary cooperation because they want to know what is going on in other parliaments. And we have strengthened the staff support in the area of European affairs. There are not a lot of new initiatives in interparliamentary cooperation. But in European Affairs we are have a project to identify the needs of the members. And we have four extra advisers in the parliament and they advise all the members on European issues. We are decentralising European scrutiny so these four advisers have divided themselves the committees and they give advice to all of them. There are various specialized advisers and I to inform the members actively. For example, there is a proposals from the Commission we notify them. Or if there is a Council meeting we tell them about the key issues etc. So the stream of information to members have been professionalized since the last two or three years. Of course as a civil servant you can do a lot but the question is how good they pick it up. And with elections members change and you have to start again to educate. It is not a natural approach by MPs to look at Europe. You can see that there is much more input but the output has not improved so much.

DRG: Is there a double mandate?

JNO: No. This is not possible also under the Treaty. There was a transitional period but now it is not allow. Sometimes in the pass some parties campaigned on the idea that MPs that were also MEPs could be a bridge between the parliaments. But we have seen easily that in practice this is very difficult.

DRG: Are there meetings between MEPs and MPs

JNO: Yes. They are not formalised meetings. In the first place you have the political context. Every political group does its own way. I know that some MPs are present in their political group meeting every week in the Netherlands. There is one structure meeting every year. We call it the debate on the state of the European Union. That is when MEPs can participate in the plenary of the debate. That is every year. The committee on European Affairs sometimes has meetings with MEPS. In principle they want to have three or four times a year in Brussels or in The Hague. We recently started videoconferences between MPs and MEPs. The meeting in The Hague did not have any follow-up.

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Mr. Peter Juul Larsen

Representative of the Danish Parliament in Brussels

Date and place of interview: 6 October 2010, European Parliament, Brussels.

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Mr. Larsen. Now, my main interest is parliamentary cooperation. I am also interested on how it affects parliamentary control of European Affairs and my focus is the parliamentary control of Europol. Some people are talking to me that some

parliaments are willing to wait to see what the Commission proposes while some others are willing to act. What is the position of your parliament?

Mr Peter Juul Larsen: We would like it to have as soon as possible. The Danish parliament proposed in COSAC that the Commission should put forward a consultation document for national parliaments. And this has been repeated on the meeting of presidents. We think that the commission should put forward the document as soon as possible. But the plan of the commission is different. They will make a loose consultation this year. We think 2013 is too long. It is too long to wait. It leaves open confusion. We would prefer if the commission cannot make a proposal soon that they will proposed an informal agreement between national parliaments the EP and the agencies. We should work together. But some parliaments think this should be the COSAC. The LIBE Committee thinks it should be the LIBE and some others would like special committee of LIBE and national parliaments. Why not start as soon as possible. An agreement could be concluded next year. EP has asked the COM to put forward such an agreement by the end of next year. We think this agreement should be done. Because the proposal for the COM for Europol could be quite complicated. Europol has more competences to make is investigations and that are very political questions.

DRG: Which type of agreement are we talking about?

PJL: We are quite open. It could be a special committee from LIBE and national parliaments. There was in 2002 Parlopol. It came to nothing. They meet in Holland and in Brussels and we should have organised the next meeting but we did not. But this was a good idea. That was a pity. Meeting in Brussels and the main actor could be the EP. We think this is OK because in this pillar they have competences. The meeting of last week in LIBE can also be a format. Because in JHA they have a role to play and because of the Treaty. We think it is ok that the EP organise the meeting. Normally we do not like that. We prefer COSAC. Meetings for national parliaments should be organised by national parliaments and the EP should only have a delegation of the same size of each parliament. That is our general view.

DRG: But not in this case?

PJL: Not in this case no. Because in the Treaty it is said that it is national parliament and the EP so this can be a half and half delegation. And also because the LIBE Committee is working quite well and it will be for the benefit of national parliaments. But we are only talking about JHA it was foreign affairs... there was a meeting two weeks ago and there our position is different.

DRG: Do you think this view is shared among national parliaments?

PJL: Czech parliament believes that COSAC should be the main fora. But a meeting like the last Monday does not prevent COSAC to have this on the agenda.

DRG: Yes but parliaments are complaining there are already too many meetings...

PJL: Yes but LIBE Committee has organised this meeting for some years. There are no more meetings. If COSAC wants it could have the issue on the agenda sometimes.

DRG: But in order to establish regular parliamentary cooperation for the control of Europol, are we thinking on COSAC?

PJL: The EP is not so fan of COSAC because they only have the same delegation as national parliaments. But as mentioned the Treaty says that cooperation should be in JHA between the EP and national parliament so it could be a half-half meeting.

DRG: Is there then a sense of trust with the EP?

PJL: The EP has some competences according to the Treaty towards Europol and Eurojust and the new regulation is going to be done by the EP and the Council. So the Treaty gives boarder competences to the EP. So we think that in this field the EP could have a leading role.

DRG: Is that a general view of national parliaments?

PJL: No. Some parliaments would like a more COSAC solution.

DRG: Which ones?

PJL: Czech parliament, Finish parliament, the Dutch parliament, the House of Lords. Normally we are with those parliaments but in this field we think different and we are with Italy that prefers a no COSAC solution. This is not exactly in the agenda of the next COSAC meeting. We have a plan that we should try to ask Barroso about the idea that we should start earlier and that they could separate the scrutiny from the rest of the proposal. This should be possible.

DRG: Why is COM so keen on delay?

PJL: That is a good question. I am not so sure.

DRG: Why some parliaments are not willing to wait?

PJL: Because we think there is advantage in working together. That is the basis of the Lisbon Treaty. The Lisbon Treaty made a very big change. Before they were responsible towards their government but now they can act together and they have some competences in the Treaty. National parliaments have a role in the EU process. We can work together and try to influence and inform each other. No so much in this field Europol it is going to work. Some parliaments are starting to start questions. And concerns of one parliament can influence other parliaments. And that is the main point of the Lisbon Treaty. Cooperation between parliaments is very important.

DRG: Do you think cooperation improves scrutiny?

PJL: Yes certainly. We even made a database with Italian colleagues. It will get better next year. That was on the basis that national parliaments are stronger in working together.

DRG: Is there any possibility that in IPEX we could have special part to deal with documents related to the scrutiny of Europol?

PJL: We are working on the reform of IPEX and one of the things we have proposed is to create a space on not proposal-related documents. So we hope there will be space for Eurojust and Europol. It could be useful for us. There are some ideas there but we need the right forum for discussion.

DRG: Regarding the type of fora some people say that COSAC represents only EACs.

PJL: That is we have proposed a revision of the COSAC rules saying that part of the members of COSAC could be from other committees depending to what is relevant on the agenda. It could be useful to have a change on the rules of procedure but it is not so important because it is possible to include informally some other members.

DRG: But some parliaments can't. For instance Italy.

PJL: Yes that is true. That is why we could have a change in the rules of procedure.

DRG: Yes but how likely is it?

PJL: Well. It depends on what happens in the future meetings. If the decision between parliaments for foreign affairs is a kind of COFAC meeting as proposed by the House of Lords. The same can be done for the JHA. As in the meeting we had last week.

DRG: Yes but this was not in the format of COSAC

PJL: That is right. But if we find a way to organise meetings like that one there is no need for COSAC to take over JHA. It is very difficult to have the COSAC meetings taking over JHA.

DRG: What is the view of the Italian parliament?

PJL: They prefer that the EP was the organiser of Interparliamentary Committee Meetings.

DRG: That is not the case of the Danish parliament?

PJL: No normally we are in favour of COSAC. The COSAC Secretariat was our idea and the majoritarian system as well. We have been very much engaged with COSAC we think is a good forum. But the problems of COSAC and the questions of JHA is that some parliaments do not want COSAC to be the main body.

DRG: So in that respect we can say that for JHA there is more willing to cooperate between the EP and national parliaments.

PJL: It is easy for us to accept the lead of the EP in JHA than it is in other matters.

DRG: But why is it that some parliaments do not accept this view?

PJL: I do not know. Some parliaments are really concerned that the EP never stops taking more and more powers. It is coming to a point that NP and the Council think that the EP needs to relax. There is no need always increase your competences.

DRG: Why some parliaments do not agree that there should not need to wait?

PJL: They are just not ready. The discussion has been taken place in the Czech parliament, in the House of Lords. But most of the parliaments have not discussed this in detail.

DRG: But we are talking about a regulation EP – Council so national parliaments have no role to play.

PJL: We have a role to play in the Council. We will tell the minister what he should do in the Council. It is an advantage to engage national parliaments more because they have contact with citizens. But is not easy.

DRG: Mandate system.

PJL: Yes. But of course we know that it is not like that in many parliaments. That is why we asked for the consultation so that national parliaments can go in first and make so good advice to the COM before the regulation is being formulated. That is why we propose that COSAC should have the consultation document. If we talk about the parliamentary control of Europol it seems that is a new topic but it is not. This is being discussed in 2001 and 2002. And there have been possibilities to improve. Why should we expect that parliaments that were never interested there would be interested now? That is difficult to say. But the issue has been discussed in France and in Prague. So the issue has been on the agenda. There has been some interest. It depends of what national parliaments and the EP should do. There are different words for Europol and Eurojust. It is not control. It is not interference. It is not scrutiny on operations. It is typical of the EU that we discussion of the form before the content. Nobody knows what the EP and NP should do. And we are discussing the forum. We think that we should do policy discussion no detail.

DRG: National parliaments have the right to control Europol and they were not doing it. What has been changed for national parliaments suddenly being now concern with the parliamentary control of Europol?

PJL: Well I do not know. I cannot say. We have a new Treaty. One of the main opinions of the Danish parliament is that cooperation with national parliaments is for those parliaments that want to take part. And if in these parliaments there are only ten parliaments it is ok for us. We are against all these big meetings.

DRG: In this context is there a sense that the EP is one of those parliaments that is interested?

PJL: Yes, totally because the level of knowledge of the members of the EP is higher than the one of national parliaments.

DRG: Yes but I do not mean if it will be interesting if the EP takes part but rather if the EP is interested on taking part.

PJL: Yes, that is the question we also ask.

DRG: Because one could look at the current control of Europol and conclude that the EP does not need to cooperate.

PJL: I do not know. You should ask the EP. But they always say that they want to cooperate. But I am in doubt myself. I think they are not really interested. They have the steering group on cooperation with national parliaments and they do what to cooperate on security and on implementation of directives but they do not want to cooperate on legislation and maybe not on Europol and Eurojust.

DRG: Let's say, if that is the case why going for a format in which is the LIBE Committee the leader and not going for COSAC.

PJL: The Treaty gives the EP certain powers on Europol.

DRG: Is there a feeling that a body that can speak on behalf of parliaments is needed?

PJL: Sometimes it is needed. If parliaments are trying to establish something it is criticised by other parliaments. National parliaments are very concerned that they should not be told what to do. So this is a very difficult question and I do not see any solution for it. We do not have to agree with all the parliaments. If some parliaments want to cooperate they should do it.

DRG: There are a big number of parliaments that are not active in COSAC and then when it comes to the conclusions is the parliaments that are very active the ones that lead? So to what extent is COSAC representative?

PJL: Well this is a normal parliamentary work. It is the same in the EP they are some rapporteurs that are more active. That is not a question. This is the description of normal parliamentary work. Those parliaments that do their homework are able to articulate their ideas etc. This is the normal process of a democratic body. But on the other hand you are quite right that COSAC has some kinds of strong personalities. That means strong politicians that are members of COSAC for many years. Lord Roper for example.

DRG: National point of view of political forum

PJL: It is a political forum but it is not like in the EP that parliamentarians are in party groups. So we are trying to express the national point of view.

DRG: So to what extent is then COSAC a political body?

PJL: Yes, that is exactly the main question for the future of COSAC and it will be discussed on the future meeting of COSAC. And again there are different points of view. We think that it should be more political and it should take some decisions on political issues. And that in COSAC it should be possible to be political and there should be possible to agree on majority basis. But some parliaments do not like that. Spain I think. And the Dutch do not want it. They think that the role of COSAC is coordinating and not making political decisions. The EP is also against. But I do not think there will be major changes soon.

DRG: Is it the proposal for Barroso only a Danish proposal?

PJL: No, there are other parliaments joining, also the House of Lords. It is too long to wait. This is a general consensus. The EP has formally asked the COM to put forward the proposal as soon as possible but on the other hand I talked to some person on the cabinet of Ms Malström and they say that the EP wants to postpone the agreement as soon as possible so they can establish the tradition of the meetings of the LIBE Committee.

DRG: Is it so that LIBE has the meetings and then this is formalized to the detriment of COSAC?

PJL: Yes. This is not official of course but I have been told that it was the parliament that wanted to postpone the proposal not the Commission. There are different voices at the EP but officially the EP wants it as soon as possible.

DRG: Why should we expect that some national parliaments would not like the EP to have the lead?

PJL: Because at the end of the day they have ten years to scrutinise Europol and they were not doing it. Yes. What I am saying is that I do not know about the JHA exactly. But the EP has proposed the COFAC and they wanted to have meetings organised by the parliament of the presidency. I think it is a strategy for the parliament and it is not casual that AFET committees were before the COFAC meeting.

DRG: But when we talk about the scrutiny of Europol it is the European Parliament that has more powers. What is the role of national parliaments?

PJL: It is true that national parliaments have more direct access to citizens. The members of Europol are decided by national members. The operation of Europol has a European and national side. Europol is a good example of national and European competences.

DRG: But national parliaments for years have the possibility of scrutiny and they were not doing it.

PJL: There has been interest in COSAC and also in the speakers on setting up a system asking for consultation. So there has been an interest. But no one knows how this will be organised. If there are only ten parliaments coming to the meetings, that is fine with us. Our view is that cooperation is for those that want to take part on it.

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Ms. Patrizia Prode

Head of Legislative Dialogue Unit

(European Parliament General Directorate for Relations with National parliaments)

Date and place of interview: 6 October 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Ms. Prode. Now, I am looking for differences in the level of participation and the commitment of parliaments towards parliamentary cooperation.

Patrizia Prode: It may depend on the internal organisation within the parliament, the resources that they have. But are you looking at all parliaments?

DRG: No. I am looking at the UK, Spain the Netherlands, Italy and maybe the Danish parliament

PP: OK because in order to have a good picture I will for sure look at the Danish parliament because it has a very good internal organisation in terms of EU affairs follow-up. Nordic parliaments are rather active. But it is true that it very much depends on the scrutiny that national parliaments have vis-à-vis

their government. For example the Danish minister cannot negotiate anything in the council until the parliament has given him/her a mandate. This is the main difference between parliaments it depends on its internal constitutional functioning, which obviously has great effect on how EU affairs are followed by each member state. This is one issue first the constitutional functioning. What is actually foreseen in their constitution? Then how many resources have been given to reply to the different functions? Just to give you an example. The Spanish parliament did not have a representative. They have one now but it is because the Spanish presidency. Until the Spanish presidency the Spanish parliament would tell us we do not need to send anyone because the parliament in Spain has very little role in European Affairs, everything is in the hands of the government. This kind of implies a smaller role of the Spanish parliament in Brussels. In Brussels it means participation of Spanish members in our Interparliamentary Committee Meetings. It is rare that they actually came; it is rare that they participate in the dialogue. Because probably the way it is constitutionally organised is that the government deals with Brussels and not the parliament. This varies enormously from one parliament to another. The Danish are extremely present, the Germans as well. They have a big office even outside the parliament. They have a lot of people following EU affairs. That means that they have budget, they invest money. And just to give you an example of what the Bundestag does, its committees came to Brussels and they meet at the premises of the EP once a year. So in the rules of procedure of the Bundestag it is foreseen that the committees have their own meetings in Brussels. This is the only parliament that does it. They have their own agenda but when they come they try to profit. So they deal with European issues. Where they invite MEPs who are rapporteurs etc. This is the highest level. Then you have the UK. The UK is quite active. The House of Lords produces excellent reports. Really their reports are well known everywhere.

DRG: Do they have an impact?

PP: I don't know if they have an impact. For sure because of language reasons their reports are the most distributed even in the institutions in Brussels. So when you talk about the House of Lords report on the functioning of co-decision everyone knows about it. Then you have the Italian parliament has an old tradition of very good staff in Rome in both chambers directorate responsible for international relations and European affairs. So they have the staff, they have the resources. And the senate has a representative here whereas the Chamber does not have it because it is a rotation system. So they came in function of the meeting. Nevertheless they came. They attend our parliamentary meetings. But what is interesting if I look it in terms of attendance. How many members came to the Interparliamentary Committee Meetings in Brussels? But the presence is not the only aspect that would explain you the impact that they have. But now with Protocol two of the Treaty national parliaments have time to express their views. And there you can see that some parliaments are more active than others. The Italian parliament is very active in particular the Senate. Parallel to Protocol 2 it is interesting that national parliaments are sending opinions not to assess the principle of subsidiarity but to support the proposals. Some parliaments are totally silent and some talk only when they raise issues. The Italians tend to do both. They raise issues but most of the times they write to say that they appreciate the proposals. We have received 80 opinions and out of these only seven are so-called reasoned opinions. If one may think national parliaments can play a negative role and that they would block. But what we can see on the years is the other way round. First of all we never have the threshold. But most of the time only two or three parliaments raise issues. All the others are there to support. They are not obliged to do that. This is terms of democratic legitimacy supports what is done in Brussels. So the institutions should not fear national parliaments as a negative actors or blockers. They are actually entering in a process where they say they agree. This should actually make easy the implementation of acts once adopted. We are at the beginning of the process. But this is what we are observing. So the fears some MEPs have before is not confirmed at all.

DRG: There is increasing number of meetings and there is also COSAC. What is the added value?

PP: COSAC is body in itself in the Treaty composed by the chairs and members of EAC and the EP has a delegation like other parliaments. Things have changed dramatically at that time EU affairs were really dealt only in EAC. This is still true for some parliaments. But the trend is that now specialized committees are dealing with European Affairs. So there is a bit of a competition. And this what is happening as well in Brussels. Our environment committee organises a meeting with national parliaments and the people coming to the meeting are the people of the environmental committee. So that is what know the debate is what is the future of COSAC given that the cooperation between parliaments is taking place more and more between corresponding committees. And this is also what MEPs want. They say if

you want to invite national parliaments I want the real interlocutor, the specialists and not just any EU affairs committee member. But COSAC in any case it is there. It meets twice a year and it will stay there because the Treaty Protocol one mentions it. Although it mentions another name. And now the question is how to give COSAC competences in the field of foreign affairs. The debate that is taking place is should COSAC be extended or should we set up a new structure. You cannot compare COSAC with any meeting organised by the EP. Because meetings of COSAC is organised by the presidency on specific issues mainly linked to the agenda of the presidency. An interparliamentary committee meeting is at the initiative of a committee of the EP and it is focussed on the agenda of a specific legislative act. So the development is to get together MEPs and MPs on specific issues more and more. And all this at the right time, which means before the adoption of the report of the committee and obviously before the adoption in plenary. They are totally different exercises.

DRG: Yes but the Protocol of COSAC allows it to organise thematic conferences. And the problem of committee meetings is that the EP sets the agenda.

PP: This is exactly the discussion that is taking place. The big question is what the future of COSAC is. Again you cannot cover twice a year all the issues that are covered in 15 committee meetings a year. To this you need add two big parliamentary meetings plus all the chair meetings organised by the parliament holding the presidency. You have in average 30 meetings between national parliaments in Brussels and in the capital of the presidency. They are a lot. The intention is to reduce the number of big meetings. This is also for budgetary reasons. And what we are trying to do with our committees is to see how we can better plan the meetings and to avoid overlap on topics. The responsibilities of our committees are sometimes covered by only one committee in the national parliaments, so if we have our committee inviting them at the same time it is impossible for them to attend. The idea of a calendar has to be very much welcomed at all levels also by the speakers.

DRG: Is there a sense in national parliaments that these meetings help scrutiny of European Affairs or is it more a burden?

PP: It depends; it varies, for some parliament it helps. For some it does not. That is why some parliaments are less present. Perhaps the Spanish parliament does not care; ok we do not need to come to Brussels because we go with our government. More or less is the same for the French parliament but in general for the time being these meetings are kind of appreciated. Complaints are on the numbers. If we reduce the number of meetings and we focus the issue the result is going to be more important than what it has been in the past. For example something that we are trying to develop is videoconference between the EP and one single parliament.

DRG: In terms of taking advantage of the meeting for scrutiny what is what makes a difference for a national parliament?

PP: For whom, for the EP?

DRG: No, for national parliaments. You mentioned that some national parliaments do not care.

PP: Some national parliaments do not bother to come to Brussels. Probably because they have their own system at home that functions very well.

DRG: But can it be just that the system does not work and there is nothing to control. It could also be. Yes why bother to come to Brussels.

PP: But in terms of scrutiny is true, when they come here is not because they scrutinise, they scrutiny is done at national level. We always say and I think it has always been clear and it is clear that the EP has its own competences and national parliaments have their own competences. Scrutiny has to be done vis-à-vis their own government. So the issue here is not scrutiny vis-à-vis the national parliaments. That is not the question. Scrutiny is done on the subsidiarity issue. This is one part of the scrutiny. Mainly when they come here is with purpose to understand what is behind a legislative act. What are the difficulties in future implementation or just to alert the EP? In this case they can influence the EP. Last week we have the Constitutional affairs committee and we have two rapporteurs. And they really took notes from the

suggestions of national parliaments. (In the LIBE Committee the rapporteurs also asked for input from national parliaments).

DRG: What about the parliamentary control of Europol?

PP: As you have seen this is just opened. They have opened the discussion and the chair of LIBE launched the idea of an informal network between national parliaments and the EP. They are very open to receive ideas with the purpose to organised twice a year a big meeting like the one we just had. But in this context I have not heard any national parliament saying shall we put a structure like COSAC. I think nothing came out. In the AFET committee instead national parliaments showed a clear idea of what they want. This is not the case in the AFSJ.

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Ms Carmen Sánchez-Abarca Gornals
Representative of the Spanish parliament in Brussels

Date and place of interview: 6 October 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: ¿What is the level of resources for interparliamentary cooperation of the Spanish parliament?

Carmen Sánchez-Abarca Gornals: In interparliamentary cooperation the Spanish parliament have in both of its chambers the general directorates of international relations with its directors and its civil servants. I cannot say the number precisely. But they are considerable number of people in each chamber. And then in concrete issues like the EU we have the EAC with its letrados and its Secretariat. And there is also my office here. And then the information services of the senate and the congress which in concrete issues prepares information. So the number of workers dealing with interparliamentary cooperation in one way or another is high.

DRG: Pero sin embargo, al menos para el que no lo vive desde dentro parece que la participación del parlamento Español en la cooperación interparlamentaria ha sido bastante escasa.

CSAG: Pero en relación a que lo comenta.

DRG: Me refiero por ejemplo por ejemplo a los cuestionarios de COSAC que a veces no tenían una respuesta.

CSAG: Bueno acabamos de tener la presidencia y las... de la COSAC las hemos seguido todas al pie de la letra. Hemos enviado el cuestionario, hemos evaluado el informe, hemos tenido la reunión de presidentes, hemos tenido la reunión plenaria de la COSAC. Hemos cumplido con todas la expectativas. De hecho durante nuestro semestre también tuvimos la Joint Parliamentary Meeting y todas las reuniones de presidentes de comisiones que se hicieron en Madrid. Vamos si hubo una actividad parlamentaria durante la presidencia. Antes de la presidencia no te puedo comentar tanto porque yo comencé en el puesto en enero.

DRG: Yo hablo históricamente. E intento ver si ha habido un cambio o una evolución.

CSAG: Si hombre está claro que para empezar este puesto no existía. Si es verdad que la presidencia española ha sido motivo de cambio. Pero no es una cuestión tanto de recursos como del sistema político español. O sea estamos condicionados por el interés político que despierta cada tema. Al fin y al cabo las cámaras son instituciones políticas en las que las decisiones se toman en función de muchos criterios que no son puramente académicos. Hay muchos intereses y está claro que el tema europeo no es el centro del

debate político en España. Y por ejemplo el hecho de que se trate de una comisión mixta hace que se centralicen los esfuerzos. Y simplifica el control. Ventajas el hecho de que hay una comunicación muy directa con el gobierno, a través de la secretaria de estado para la Unión Europea con comparecencias muy frecuentes del secretario de estado y de otros cargos del ministerio. Está muy asesorada por los letrados.

DRG: ¿Y desventajas en cuanto al funcionamiento?

CSAG: No son desventajas son más bien los condicionamientos de nuestro sistema. Es que es lo que hay. Con la entrada en vigor del Tratado de Lisboa se preveo que el control parlamentario de Europol se lleve a cabo entre el Parlamento Europeo y los parlamentos nacionales. La decisión de la Comisión se retrasa hasta 2012. No hay una posición oficial de la comisión mixta. El interés es muy alto y de hecho la comisión Europea ha convocado a los parlamentos nacionales. El parlamento Español ha mostrado su interés. Cuando la comisión lance su propuesta el parlamento Español comenzará a posicionarse. En general el proceso está pendiente.

DRG: ¿Que formato?

CSAG: La comisión mixta como tal no tiene opinión sobre ese tema. Lo que sí que te puedo decir es que las reuniones interparlamentarias que se celebran en el EP en las que se convoca a los parlamentos nacionales siempre tienen ese formato. Y los parlamentos nacionales, no todos también hay que decirlo, pero por parte de Española cuando la mesa del Congreso y el Senado lo autoriza asisten. Y no hay una crítica general al sistema. Porque entendemos que si el parlamento Europeo convoca en su sede ellos deciden como. Pero sí que es verdad que hay otras vías de cooperación interparlamentaria más allá de lo que haga el Parlamento Europeo. Por ejemplo los parlamentos nacionales tienen su propia estructura en la que no intervine el Parlamento Europeo y eso si que la Comisión mixta lo defendió en la última COSAC. Dado que existen vías de cooperación interparlamentaria organizadas por el Parlamento Europeo la posición del Parlamento Español es que la COSAC podría ser ámbito en el que los parlamentos nacionales actuaran independientemente sin la presencia del Parlamento Europeo.

DRG: Entonces hablando específicamente sobre cómo organizar el futuro control parlamentario de Europol un foro como la COSAC parece más apropiado?

CSAG: Sería un nuevo foro como la COSAC.

DRG: Bueno la COSAC tiene la potestad de hacer..

CSAG: Pero la COSAC también se ha dicho que no es el foro más apropiado para eso. Pero no es esta la opinión del parlamento Español. Habría muchas maneras. Habría que ver cómo pero está claro que no es un tema pacífico. Habrá que irlo concretando pero sí que es verdad que la cooperación entre los parlamentos nacionales es distinta de la cooperación entre los parlamentos nacionales y el Parlamento Europeo. Y de hecho aquí están todos los representantes de los parlamentos nacionales y tenemos reuniones y en esas reuniones no hay ningún representante del Parlamento Europeo expresamente.

DRG: ¿Son reuniones informales?

CSAG: No, son reuniones de los representantes nacionales.

DRG: ¿Ven los parlamentos nacionales al Parlamento Europeo como un rival?

CSAG: No como un rival. Pero somos instituciones diferentes con posicionamientos diferentes entonces no podemos equipararnos. Estamos aquí por una serie de razones pero también es verdad que nuestro trabajo es distinto al suyo. Se puede ver como cooperación como competición y de diferentes maneras pero al fin y al cabo en las instituciones cada uno está en su sitio.

DRG: Y en el caso específico del control parlamentario de Europol, el tratado dice que es el Parlamento Europeo el que tiene la sartén por el mango.

CSAG: Si pero ya te comento que la COM va a consultar a los parlamentos nacionales. Que son los que van a tener que llevar a cabo este control. Tampoco te puedo adelantar como va a terminar esto ni qué papel va a jugar cada uno pero yo creo que los parlamentos nacionales no van a dejar. Está todo el mundo muy interesado. Para que veas hasta que punto llega el interés hubo una propuesta de a que ha esta reunión de trabajo (será la que comenta Ed Lock) asistieran únicamente algunos parlamentos en representación de los demás. Y esto no se aceptó. Todos los parlamentos quieren participar en esto.

DRG: Sí. Pero desde 2002 ha habido iniciativas en las que se intentaba mejorar el control parlamentario de Europol. Sin embargo es ahora cuando los parlamentos nacionales se mueven.

CSAG: Porque ahora está en el Tratado. El Tratado aunque no todo lo que contiene sean novedades como tal es verdad que al formalizarlo a ese nivel da pie a cosas que antes no sucedían. Como el papel de los parlamentos nacionales. Comienza una nueva dinámica.

DRG: Pero con la antigua base jurídica de Europol los parlamentos nacionales al menos cada uno podía controlar Europol.

CSAG: Claro pero ahora la cuestión es que se intenta buscar un sistema en el que todos participan, un sistema mucho más homogéneo que no cada parlamento nacional decidiendo..

DRG: Sí. Entonces en este sentido la cooperación se ve como una posibilidad para mejorar el control o como algo impuesto por el tratado.

CSAG: Yo lo veo desde un punto de vista positivo. Como una posibilidad de mejorar el control. No una obligación a la que los parlamentos se ven arrastrados. Ellos también tienen aquí una iniciativa. De hecho por eso asisten a las reuniones de la comisión LIBE y por eso quieren participar en la reunión con la COM. No están obligados a hacerlo tampoco.

DRG: Todas las propuestas para mejorar el control democrático, en el pasado han muerto. Cuál es el valor añadido de los encuentros que se realizan, sea en el EP o en el parlamento de la presidencia y los de la COSAC? Son dos diferentes foros el de la COSAC y los que se hacen conjuntos, sería un formato en el que el control de Europol podría encajar. ¿Cuál es el valor añadido que parece ser que tienen los Joint Committee Meetings que es lo que la mayoría de los parlamentos prefiere?

CSAG: Joint Committee Meetings son tanto los que co-organiza el Parlamento Europeo con el parlamento de la presidencia como los que organizan las comisiones del Parlamento Europeo. En los primeros se elige un tema concreto y se hace sobre él. En los segundos la comisión del parlamento Europeo simplemente decide invitar a los parlamentos nacionales.

DRG: Me refiero a la segunda

CSAG: Es solo el Parlamento Europeo quien organiza e invita. Se podría hacer ahí el control de Europol pero ahí hay mucho más control por parte del parlamento Europeo. Ahí el parlamento Europeo decide cuándo. Ese es otro de los caballos de batalla que no se puede convocar a los parlamentarios nacionales cualquier día de la semana. Porque tienen muchísimas obligaciones en las capitales y hay plenos y hay votaciones y no pueden viajar y entonces pues tienen que compatibilizar bien la agendas y cuando decide una comisión del Parlamento Europeo pues lo hacen cuando les viene bien a su agenda. Esto a veces se ve reflejado en la asistencia. Pero si quieren que los parlamentos nacionales asistan siempre se puede buscar una solución. Esta también es un poco la función de los representantes de los parlamentos nacionales.

DRG: Hay una voluntad política desde las instituciones Europeas de involucrar a los parlamentos nacionales. O es simplemente porque lo dice el tratado.

CSAG: Yo llevo en este puesto desde enero pero por lo que me comentan mis compañeros hay una actitud deferente respecto a los parlamentos nacionales. Porque el tratado los ha colocado en una posición preeminente. Sí que se cuenta con ellos a todos los niveles tanto aquí como en la comisión.

DRG: Se podría decir que hay una relación de confianza entre el Parlamento Europeo y el parlamento Español.

CSAG: Sí. En la última COSAC hubo algunos puntos de desacuerdo. Pero a nivel institucional por supuesto que la relación no es de oposición ni mucho menos. A nivel personal el trabajo de los miembros del Parlamento Europeo con los diputados y senadores es buena. Son compañeros en cada uno de los grupos. Y a nivel de funcionarios la cooperación es muy estrecha durante la presidencia hemos tenido que trabajar codo con codo durante seis meses. De hecho yo estoy aquí dentro del Parlamento Europeo.

DRG: En el caso de España existen encuentros entre parlamentarios nacionales y parlamentarios europeos

CSAG: Si pero los organizan los grupos.

DRG: ¿Solo existen a nivel político? ¿No existen a nivel institucional?

CSAG: Solo los grupos.

DRG: ¿Cuál es exactamente el control parlamentario que realiza el parlamento Español sobre Europol?

CSAG: Hay comparecencias del director de Europol pero exactamente no te lo sabría decir. Habría que mirar la ley. La ley 8/94 tiene un artículo que permite a la comisión mixta participar como así lo indica el tratado de Lisboa en el control de Europol (Artículo 3, Apartado n). Pero el cómo está todavía por definir.

DRG: Dado que la base jurídica de Europol entre 2006 y 2010 ha cambiado completamente, de hecho se ha convertido en una agencia europea y antes estaba fuera de la unión.

CSAG: Las cortes han ratificado la nueva base jurídica. (Error, porque se ha hecho con una decisión del consejo). No sé a través de qué instrumentos jurídicos se ha hecho. ¿Qué normas eran?

DRG: He visto que se ha aprobado pero no he visto que se haya discutido.

CSAG: ¿Pero qué norma es?

DRG: Es una Decisión del consejo. Es la decisión del consejo de establecer Europol.

CSAG: Yo no sé lo que se ha hecho.

DRG: ¿Conoces a alguien que pudiese darme más información? Sobre todo en el tema de escrutinio de Europol?

CSAG: Eso es competencia de la comisión mixta pero también de la comisión de justicia. Tendría que consultarlo. Te doy mi tarjeta y estamos en contacto. Se lo puedo preguntar a los letrados de las comisiones.

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Mr Krzysztof Bernacki
Head of Institutional Cooperation Unit
(European Parliament General Directorate for Relations with National parliaments)

Date and place of interview: 7 October 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Mr. Barnacki. Now, I am interested in COSAC...

Bernacki: You will find a lot of interesting information in the COSAC website. One of the topics of the last biannual report was the scrutiny of Europol. And the report is the result of what we call the questionnaire. That we sent to all parliaments. The responses represent the position of each parliament. COSAC Secretariat analyses the responses and composes the report on the basis of the responses. So is a very good source of information. Another source of information is the LIBE Committee. The opinion of national parliaments is that this discussion should take place in COSAC. And they will put on the agenda of COSAC also the evaluation of Europol and Eurojust. And COSAC tries to invite representatives of these two institutions to the COSAC meetings. There is not yet clear answer how COSAC will proceed. There are different options. Some parliaments prefer to have a background paper and then discuss with the directors of the agencies. The other proposal is let's have the discussion first and then we do the evaluation. But this is only a practical question. Most of the parliaments favour the option that COSAC discusses the issue. However, it is not so clear and easy. Because COSAC is composed by EAC members.

DRG: Yes technically.

KB: Technically and Europol and Eurojust evaluation is a matter for specialized committees like Justice and Home Affairs committees. This is always a problem of COSAC, how to combine the EAC members expertise with specific topics which members of other specialized committees will be better suited to speak. And there is no answer to this COSAC composition is fix. It is only EACs. And of course they have a say because in the Treaty there is an obligation to the parliaments to set up a system of evaluation and monitoring. So the parliaments will do it. However there is a question of competence. Who will do it? Whether there will be EAC people or the people from the specialized committees. But we will see.

DRG: But in the case of Europol could easily be a joint committee of LIBE or parliamentary committee of LIBE.

KB: Well, LIBE of course is happy to host such meetings. However there is a problem of equal participation. When we have Interparliamentary Committee Meeting, committee meeting with national parliaments. We call them Interparliamentary Committee Meetings at committee level. And these meetings are either hosted at the EP and they are organised by the EP or they are hosted in the parliament of the presidency. Now Belgium parliament has organised several of these meetings. But at those meetings the host parliament is normally represented by the whole committee. So when LIBE organises meetings they have all their members and we invite up to four members from other parliaments, what is seen as fair representation for national parliaments.

DRG: However I have been talking with the representatives of some national parliaments and they do understand that in the case of Europol it could be understandable that it is the LIBE Committee that is leading with the dossiers, that according to the Council decision of Europol it is the EP the one that has the control powers and the one that has most of the expertise so it could easily be that this can be reflected and it is no problem.

KB: Well, if the majority is in favour the LIBE Committee would be happy to go ahead with this. They have already organised such meetings. On Eurojust is not so clear because of the scope of competences. So you will talk tomorrow to Emilio and he will tell you the position of the EP. He is aware of the reports. Not all national parliaments would agree to hold this parliamentary evaluation here at the initiative of our LIBE Committee. But the reflection of this position you will find it in the COSAC bi-annual report. In the future report there is a chapter on the future role of COSAC and this issue is mentioned. But the 14th biannual report should be available in two weeks. It will be adopted on the 26th of October. My unit is dealing with other forms of cooperation not at the committee level. Other forms of cooperation, we have Joint Parliamentary Meetings organised together by the EP and the parliament of the country holding the presidency. We organised at least one such meeting per semester. Last time it was in June. We choose the topic of the meeting together with the presidency country. And it changes. We had meeting on migration, social inclusion, on economic issues. Before the Lisbon Treaty we had meetings on the Future of Europe. We had meetings on Western Balkans. The next one will be in November with the Belgians. We have a meeting on economic crisis and economic governance. These meetings we organise jointly. We invite six

members from national parliament. We have special structure and the president of the EP and of the parliament holding the presidency chairs the meetings. We agree jointly on programme and speakers. And the structure of the meeting is one plenary session in the afternoon which is followed by three working groups where discussion focuses on more concrete issues. And then in each group there is a rapporteur who makes a presentation of the report to the plenary in the following morning. We usually have a representative of the Council and the president of the Commission. They present on the topic and they also take question from the plenary. Then there is a debate. The debate is close with the remarks of the presidents. We have a report from the working groups and minutes that we distribute.

DRG: So you unit doesn't deal with Joint Committee Meetings?

KB: WE do Joint Committee Meetings. The organisation is similar to the Joint Parliamentary Meetings. For Joint Parliamentary Meetings our EP delegation is composed of 60 members. National parliaments have six members per delegation. For the Joint Committee Meetings it is up to four members per chamber and it is a joint venture. So we need to identify topics and committee that are willing to do it in a joint way (chair, agree agenda, etc.). And of course we have less Joint Committee Meetings than interparliamentary committee meetings. One or two per semester.

DRG: Do this varies across topics?

KB: JHA it could be a good topic. It is a shared competence but there must be a willingness to do it in a joint way. Our LIBE Committee and the equivalent in national parliament of the presidency they will have to agree. And this is not always the case. On other topics like culture. Culture is not a European competence it is national. However there is an interest from our Culture committee to do joint meetings.

DRG: Because of the lack of competence of the EP?

KB: Yes.

DRG: But there is a tendency, at least at the LIBE Committee to shift between Joint Committee Meeting and Interparliamentary Committee Meeting at committee level.

KB: Yes some committees prefer to do it that way because it gives them more freedom. They are the owners of the meeting. They chair the meeting; they control the agenda and they do not have to consult national parliaments the just invite them. However in some cases there is an advantage having a Joint Committee Meeting. Like for instance the Committee on Culture. Competences are at national level and our culture committee has an interest on doing jointly. If there is a legislative proposal in the pipeline from the Commission where national parliaments have an interest to discuss with the European legislator, the EP, Then in this case there may be interest on both sides to have a joint meeting. Because national parliaments normally control the outcome in the co-decision through their government and through the Council but given the increased powers they are more willing to do now at the Interparliamentary Committee Meeting with the other parliaments and with the EP. As in the Treaty it says that the organisation of interparliamentary cooperation will be established by national parliaments and the European Parliament together. So there is a willingness to do it jointly. But it is on a case by case. Some committees are prepared to do it jointly and some are not. Some committees have a specific interest to do it jointly. Joint committee means more consultation and it is a more cumbersome procedure. They cannot decide individually. We have the political groups coordinators in each committee. And the coordinators meet and they decide we organise a meeting with national parliaments on this meeting. When they decide to have a joint meeting they have to consult with other parliaments, with the parliament of the presidency and the committee of the parliaments what are speaker, agenda, distribution of speaking time etc.

DRG: So if we are thinking about the future of parliamentary cooperation specifically the parliamentary control of Europol it will be a very cumbersome procedure to go for a Joint Committee Meeting with the LIBE Committee.

KB: Well it is not very cumbersome. It is much easier to decide on your own. It is like when you are married. Sometimes they decided to go ahead on their own. But sometimes they have a political interest

to associate and to give more role to national parliaments. And Joint Committee Meetings give this opportunity to give a more prominent role to national parliaments.

DRG: So can we then assume that for national parliaments COSAC is a much better parliamentary meeting where they have much more control on what would be the outcome

KB: Well yes. COSAC is a balanced meeting. All delegations participate with the same number of delegates. So EP delegations have six members and national parliaments delegations have six members.

DRG: But if we think about the scrutiny of Europol as it is said in the Treaty that it should be done together. Then we find a problem with the composition of COSAC. Because it is not specialized composition.

KB: Well, national parliaments have freedom to appoint their delegation. They could take some members from specialized committees according to the topic of COSAC. But it is not always the case because there are members of the EAC in parliaments that would like to participate in COSAC.

DRG: Yes and some parliaments do not allow that.

KB: This is not the case for the EP. Because we do not have a EAC. We have AFCO committee which is responsible for inter-institutional measures and inter-institutional relations. The chair of the AFCO committee heads the delegation of the EP together with one vice-president responsible for relations with national parliaments. We have two heads of the EP delegation and they are permanent. We have two COSAC meetings a year and the head of the delegations are always the same people. The committee chair or vice-president changes every two and a half years. Then the heads of the EP delegation will change. The four other members are elected according to the Dons system. But this system will only say the group. And it is up to the group to nominate a member and this member is chosen in light of the subject of COSAC. So the EP do not have this restriction that it is only EAC. Our delegation is nominated by the groups and of course within the groups they know the COSAC agenda and they nominate their agenda according to the topics. In national parliaments is not so easy because it is EAC and they want to keep it within EACs. And there is conflict between EAC and specialized committees of national parliaments. There are different solutions. Some national parliaments have an EAC that combines both chambers a joint committee (Spain, Belgium).

DRG: There should be a regulation between the EP and the Council to arrange for the parliamentary control of Europol between the EP and national parliaments. The Commission has to come forward with a proposal and it is clear that they will take a long time. It was said at the meeting that I attended on Monday 2012. I have been talking to representatives of national parliaments and some of them believe that this is too long and that there is no need to wait too long and that there will be an informal way to arrange this.

KB: Of course there is a way. First of all national parliaments asked the Commission to consult them before actually the draft proposal is put on the table. So they asked for consultation during the preparation stage which is a noble thing. Normally every one waits until the commission puts its proposal and then it is discussed.

DRG: But were they consulted?

KB: Well as you said the Commission is aiming at 2012 so the parliaments have already made this request and the Commission is thinking how to respond positively but of course with some limitations not to give the parliaments too much possibility to influence the proposal before it is published. The Commission would like to maintain good relations with national parliaments but at the same time it wants to keep its competences. And the commission is responsible for draft proposals. However, I am sure that the commission in one way or another will respond positively to this requests and somehow consult the draft the regulation. I am not sure how.

DRG: And what is this idea that the regulation would deal with many things but parliamentary control of Europol could be taking out of the regulation that will take long to be drafted and only parliamentary control could be done by an institutional agreements.

KB: Well as you said informally it can be arranged among the parliaments. As in the COSAC, they can put it on the agenda and they can cooperate. We already had a COSAC meeting where directors of Eurojust and Europol were invited. I remember they were there and they were reporting to the COSAC and they were questions at the COSAC meetings. COSAC could do it again. They can put it on the agenda. Because the agenda is drafted by the presidency parliament. They could invite the responsible people. And this does not require regulation, and is an informal agreement of parliaments.

DRG: Yes but this is not happening.

KB: Well there was a discussion already. COSAC met with the directors of those agencies. And it is possible that the issue is in the agenda of the next COSACs. Not now because now is Europe2020, Future of ESDP and the future of COSAC. The evaluation and the scrutiny of Europol will come up when they look at the future of COSAC. Also on the report there are some new elements on this.

DRG: So is this a topic that is very much linked with the future of COSAC?

KB: Yes. COSAC will discuss its future and it will discuss whether they will do it regularly or ad hoc. But it is certainly on the agenda. But it does not mean that if it is discussed in COSAC is not discussed in LIBE or in national parliaments.

DRG: No it does not mean that but the view of national parliaments is that there are already enough meetings and...

KB: Well it is not duplication. It is the question of what is on the agenda. They have the Treaty obligation of scrutinize.

DRG: Is it an obligation or is it a possibility. Because some parliaments understand that

KB: Well I have the Treaty. It depends how you interpret the Treaty.

DRG: Because that is possibly one of the fears. If COSAC decides we are going ahead for scrutiny then are national parliaments obliged?

KB: Let's see... [He gets the Treaty] This regulation shall determine arrangement for enrol the EP and the national parliaments. And for Europol is article 86..

DRG: 88

KB: I think is the same? In my view is an obligation. (He reads the article) This regulation shall also lay down the procedures for the scrutiny of Europol activities by the EP together with national parliaments. When it says shall lay down procedures it means there will be scrutiny. For me it is an obligation. Regardless of practical arrangements there is an obligation for national parliaments to scrutinise.

DRG: But in ten years they have not done it so...

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Ms. Eszter Fay

Administrator at the European Parliament (General Directorate for Relations with National parliaments)

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Ms. Fay. Now, what do you think of COSAC?

Eszter Fay: The EP as an institution only has only three person in COSAC. And we have all the 40 chambers on the other hand. And here is this kind of Interparliamentary Committee Meetings all our MEPs from the committee (or even from other committees) can be there.

DRG: Different balance of power?

EF: Yes. If we discuss these issues here, national parliaments can come and they come and discuss. But our members can express themselves as well. Meanwhile in COSAC we are much less represented. So practically the discussion is different. This is also what is the difference in the two ways.

DRG: But because of that. For some national parliaments it will be better to see the discussion in other fora.

EF: But for instance for Europol the attributions are given to both. Then these kinds of meetings are welcomed. And there could be a real discussion between MPs and MEPs. And you show (in the meeting I attended) there was no objection. Even nowadays they ask for meetings like this and to continue the dialogue and discussions in this framework.

DRG: There were some complains. Some complained that they have only two minutes.

EF: Oh yea, one person complained.

DRG: But I have been talking with some people and they expressed this to me.

EF: Oh yes but then we can organise more meetings. Even twice a week to give more opportunities. But MEPs have also two minutes so the rule is two MPs and one MEP. So in a way we try to get them involved.

DRG: There is a general feeling that at least some chambers would like to go for a more type of informal cooperation.

EF: Probably but I do not know.

DRG: For the EP is also the impression. That they will prefer not to have formal structures?

EF: Do you mean for the control of the agencies?

DRG: Yes

EF: I have not heard any concrete concern from MEPs.

DRG: The House of Lords put it quite clear. They would not like more meetings etc.

EF: Yes. But you ask for the EP. MEPs do not have a concrete opinion. We thought that this meeting would lead to a concrete position. But it did not. So probably the next one they will express themselves.

DRG: So is there a meeting scheduled?

EF: No but there will be one in the first semester next year. They mention that it could be during the Hungarian presidency.

DRG: Talking in general about parliamentary cooperation is there a feeling that parliaments that have a weak scrutiny for European Affairs tend to participate less in cooperation?

EF: I cannot tell you. I do not analyse the scrutiny systems so I cannot compare. I can only tell you who are the most actives.

DRG: So who are the ones that participate less?

EF: It depends. Participation I understand by the sending of opinions but participation meetings then we have look for our statistics for sending opinions the most actives are Austrian, Italians, Czech, Polish and sometimes French, German. And then you will see who the less active are; those that I do not mention. Spanish sometimes they send.

DRG: Does the unit have statistics?

EF: As soon as the new statistics are out I can send them to you. Send me an e-mail asking concretely statistics and I will ask the Secretariat to do.

DRG: When a Joint Committee Meeting is organised like the one I attended...

EF: Just for the terminology. This is not a Joint Committee Meeting. We call it interparliamentary committee meeting. The difference is that the joint is in cooperation with the EU presidency. They do the programme together, they invite together. In the interparliamentary it is only the EP who organises.

DRG: But these meetings are organised only in Brussels.

EF: Yes, the same format as you saw.

DRG: And the others?

EF: They are also in Brussels. This is for logistical reasons because the EP has the rooms and the interpretation services.

DRG: But there are some of these meetings that are organised by the parliament of the Presidency and the EP and they are organised in the capital of the presidency...

EF: Not the Joint Committee Meetings. Probably the chair meetings. The chairs of the all Justice and Home Affairs committees etc. You will find it in the book.

DRG: OK. Yes. And the Joint Parliamentary Meetings that are not committee based.

EF: Yes. When it is joint we organise together and in close cooperation with the presidency parliament. When terminology is correctly used joint means that it is organised in close cooperation with the presidency parliament. The agenda is set up together and the whole programme is agreed together.

DRG: Looking at these differences between interparliamentary committee meetings and Joint Committee Meetings, then in the case of what would be the future parliamentary control of Europol, what is envisaged?

EF: It will be parliamentary meeting.

DRG: Not joint.

EF: For the moment not joint. Because the last one was a parliamentary meeting (not joint) and participants agreed that we can continue in the same format. Then..

DRG: But in some the interviews I have with representatives of national parliaments some of the complaints were about the agenda. Some of these representatives said, but we would like to have a say on the agenda...

EF: Yes and no. Because in a Joint Parliamentary Meeting only one parliament (the one holding the EU presidency) can have a say on the programme. But the others still can't.

DRG: Ok. When there is an interparliamentary committee meeting for example the LIBE Committee what is the role of this directorate of national parliaments and what is the role of the Secretariat of LIBE?

EF: We are interface between national parliaments and the EP. So we try express the interest of national parliaments and their concerns before the EP. For instance, for the programme we make sure that there should be one speaker from national parliaments in each session. So we contact them etc. But in this case we contacted them and nobody answered from any parliament. So they have the opportunity to express themselves in the sessions but nobody wanted to do it. Then we call them and asked them one by one. So we asked do you have a member that would like to express the national position on the topic?

DRG: So there was no member?

EF: Not at the beginning. Spontaneous not. Then when we asked them yes. But at first nobody reacted. So we had to be proactive and explain the situation. We are the ones who check if there is a final contribution or declaration. In the programme we also introduce the conclusions to emphasise what concretely comes out of the meeting. So there is not only a discussion like this but also a plan for the future. So we know what interparliamentary cooperation in this matter we should organise in the future.

DRG: So in a way the EP is taking the lead

EF: Yes

DRG: What would be the role of the Secretariat of the LIBE Committee?

EF: They set up the agenda. They contact the agencies' directors, they form the programme.

DRG: So their role is more on the contact and your is?

EF: More organisational and more expressing the views and the concerns of national parliaments and to communicate to Interparliamentary Committee Meetings.

DRG: So is there a feeling in national parliaments your directorate is an open gate for relations with the EP?

EF: For some of them yes. Some of them try to get direct contact but it is very complex. Because the EP has its own committees or the political groups and also the language. So for some national parliament's representatives is much easier to come to us who are here to help them. Some of them try to be everywhere. They try to get contacts everywhere and if they can manage it is up to them.

DRG: Which are those?

EF: It depends very much on the representative.

DRG: This means that the chambers that did not have a representative here missed a lot from parliamentary cooperation, right?

EF: Oh yes absolutely. Spain has it since some months.

DRG: But it is possible that they had it because of the presidency.

EF: Oh absolutely. We had to convince them to send somebody.

DRG: So it was not proactive?

EF: No. The door is open. We provide with phone, office etc. But until the presidency they did not use it. Although we try informally to tell them please is good for you. For us as well because we have an interlocutor. So we like them, we invited them and we worked with them on daily basis.

DRG: So, if the EP provides for office etc. Not having a representative is not a budgetary question.

EF: Budgetary yes, because of the salary of the person. But I do not know. But a Spanish colleague of mine told me that Spanish parliament dependent on hierarchy. But I do not know.

DRG: Is there a general sense of trust between the EP and the NP?
In general not. As soon as you speak of national parliament you cannot speak on general terms. It depends very much from one parliament.

DRG: And is it those that are more active those that have high level of trust?

EF: Good question. This is a more political question so I do not know. I do not have this overview. This is a very complex question.

DRG: Talking about different policy areas do you see a difference in the level of participation and the responses?

EF: Yes. Absolutely. When you send me the request for statistics for participation you can also ask me about statistics about opinions sent by national parliaments

DRG: I will send you because you can see which is the area where most of the opinions (Protocol 2 arrive). LIBE is one of the areas which is in the focus of national parliaments. LIBE is the one.

EF: And economic issues is the second.

DRG: Why is LIBE?

EF: Because in LIBE are the most proposals submitted to Protocol 2 of subsidiarity.

DRG: The fact that most proposals for Protocol 2 are submitted to LIBE is one explanation. But this does not mean per se that national parliaments should express themselves.

EF: Yes exactly. But this is interesting. They express themselves because the topic is interesting for them because it deals with issues of security, sovereignty, and this kinds of attributions that until not so long ago where the domain of national sphere.

DRG: So there is fear?

EF: Yes, there is fear and so the focus on it. Actually I just check. All the negative opinions that arrive until now there are three for LIBE and one for culture and fisheries.

DRG: According to the Protocol parliaments have a very negative role. They can only complain.

EF: Yes but some express positive comments.

DRG: So then the number of opinion is not equal to disagreement.

EF: No. But this a procedural question. Because when they support they should not sent any comments.

DRG: But they do

EF: Yes they do. But they should not because according to the Treaty a reasoned opinion express a reserve according to the principle of subsidiarity. In all the rest of cases whether they send their support or the do not express we consider they support. Because if they do not support they need to send a reasoned opinion.

DRG: But if someone is trying to understand the support and is looking at the opinions. One needs to look at whether is positive or not.

EF: Yes we always distinguish. Reasoned opinion and opinion. Because we care about the reasoned opinions.

DRG: So why are they sending them?

EF: We do not know. Actually, from a practical point of view it will be better that they do not send it. Actually this is new for them probably they do not .. they think it is good to support. It is interesting. And sometime they call them reasoned opinion but they are not. They called reasoned because they give reasons why they agree. It is always interesting to have the positive opinions for the rapporteur. Because they explain the concerns on the subject of the details. So it is always interesting. It is just that for us is not relevant in the framework of Protocol two. But it is relevant in the informal dialogue between the EP and the national parliaments. It is interesting for the rapporteur to have the opinion and interest of national parliaments. But legally speaking it is only the negative opinions that we have to deal with and only on subsidiarity.

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Ms Loreta Raulinaitytė
Permanent Member of the COSAC Secretariat

Date and place of interview: 7 October 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Could you say your name?

Loreta Raulinaitytė: I am Loreta Raulinaitytė, the permanent member of the COSAC Secretariat.

DRG: Thank you for accepting being interviewed Ms. Raulinaitytė. Now, I am interested on interparliamentary cooperation. And on the different forms it takes. Particularly if focus on JHA.

LR: And what specific on JHA?

DRG: My main interest is the parliamentary control of the agencies, particularly Europol. But I am also interested on having a general view. Because there is not much going on regarding Europol.

LR: Not yet. The Lisbon Treaty opens up a whole new range of possibilities for national parliaments. Europol and Eurojust are specially mentioned on Article 12. Where national parliaments are involved in the control and monitoring of the activities. So you know better than I that Articles 85, 86, 87 on the Treaty provide for Europol and Eurojust. It is now the time when national parliaments and the EP need to discuss how this is going to be arranged. As Article 12 gives specific competences to national parliaments they have several options. They can do it individually and some national parliaments are already doing it. For instance Lithuanian. They can do that. They could do it before the Lisbon Treaty and now with the Lisbon Treaty they are doing it. They invite representatives of Eurojust and Europol to present their annual report and to have a debate with MPs in the committee on European Affairs.

DRG: Not in the committee on JHA?

LR: I am not sure whether they do that. We do not have a specific committee on JHA but a legal affairs committee. I think it was the EAC that started the initiative. I can't tell you for sure whether the legal affairs committee has hearings. Quite probable that they will have because the rules of procedure of the parliament need to be changed. And it is now when national parliaments need to decide whether to do it individually on a national level or to do it at EU level and in what format.

DRG: Because the Treaty says together. But some national parliaments understand together as...

LR: No no, article 12 does not say together. It says national parliaments contribute to the good function of the union by: monitoring the monitoring of subsidiarity etc and by participating in the parliamentary control.

DRG: Yes but there is another article.

LR: Yes 85 and 88, which says together with the European Parliament.

DRG: Yes

LR: But that is where I started my speech that national parliaments under the Lisbon Treaty can do that individually at national level under Article 12 or together with the EP at the EU level and they have to discuss and decide how they do that.

DRG: So there is a contradiction in the Treaty?

LR: No, absolutely no. Every national parliament of the EU is a sovereign parliament. And even if they were not provisions on the Lisbon Treaty they can do parliamentary control, nothing precludes them from doing that. There is no contradiction they can do that on both levels. Certainly for Europol and Eurojust is a bit 'over headed' because they are really... I was on a strategic seminar in Bruges where they discussed these issues and they were a little bit concerned that they may face the monitoring of their activities by 41 parliaments plus possible COSAC or another Interparliamentary Committee Meeting organised by the EP. There is a possibility of that. No body can preclude that from happening. But every body is now rational. Nothing is decided. We will see.

DRG: Yes but what has been the trend are national parliaments waiting for organising this cooperation?

LR: The Treaty just came into force. And we have 40 parliamentary chambers in the EU. They all have opinions. In order to find one that satisfies all it takes time and COSAC is taking a lead on that. EP is also trying to discuss that. LIBE just had a good meeting on this. But at this time is really the time of search. And nothing has been discussed. And in our future biannual report where we discuss the future of COSAC we have asked the parliaments what they think about discussing those things within COSAC whether they think that the Heads of those institutions should be invited, whether outside experts should be invited, and in which format. If they have an official position they tell us, if they have not they will tell us they are still discussing. But everything is very flexible and very open for debate. And one of the three main topics for the next COSAC in Brussels is the future role of COSAC and COSAC will be looking at those matters. As the only interparliamentary body which in the Treaty and united the national parliaments and the EP. And it is a very good body. Very suitably placed to do this.

DRG: To do the discussion, or..?

LR: To perform the parliamentary control of Europol and Eurojust.

DRG: I agree that this could be possible. But one opinion that I have heard these days is that parliaments would prefer more informal settings.

LR: Of course no body wants parliamentary control to be buried under bureaucracy. And in these times of financial constraints no body wants to create anything new. But COSAC exists already.

DRG: Yes but there are also Joint Committee Meetings.

LR: In the EP. This is the EP initiative. I have nothing to do with this and I am not talking about those. My opinion and this is my personal opinion is that since COSAC is the body that unites all national parliaments and the EP all 41, which meets regularly, which costs nothing, which has a small Secretariat is an excellent body to do that. We started that under the French presidency when both the directors were invited and presented their institutions and we discussed how the monitoring could be done. That has been already done once. We looked at those issues in our biannual reports and we will continue to do that. Certainly no body wants to create any other conferences like COSAC. And COSAC is in Protocol N1-Article 10 the conference which may hold Interparliamentary Committee Meetings on specific topics one of those topics is mentioned CFSP other topics are to be discussed and decided. EP can also on its part organise meetings but every one has to be rational. Because JHA is just one area and there are other areas where national parliaments would like to be involved.

DRG: Some of the opinions that I heard at the EP are that the problem with COSAC is that we are one delegation of 41. So then to go for joint scrutiny in that format is not the best choice for the EP.

LR: Why?

DRG: Well, that is the opinion that I have heard. I guess the EP would like to have more initiative here.

LR: I do not know if you have ever time to look back. COSAC was created under the initiative of the Speaker of the French senate and he was also a member of the EP. He suggested this idea to the Speakers conference in Madrid and all agree that at the time... Yes the EP. Yes the history of COSAC it was created in 1999, ten years after the direct elections to the EP, until 1979 MEPs were also MPs so during ten years there was this gap between European politics and national politics. We had to organise something and bring back national parliaments. They have to know, they have to have a forum where they can say what they think about and exchange practices. And the idea came about with this forum of EACs. At the time when that conference was established some parliaments did not even have an EAC. EP was not a member of COSAC later it became member. And the rules of procedure were negotiated together with the EP and they agreed with equal representation up to six members. So well national parliaments and the EP agreed on the format of COSAC 20 years ago. What can we do? The only thing we can do now is to change the rules of procedure. But for that we need to open the whole debate.

DRG: I understand that you cannot comment on that. But we have seen that there are some parliaments that are more passive towards parliamentary cooperation. Those are the ones that are waiting for the COM. Well I just wanted to have your view on that.

LR: I cannot tell you why. It is too early to judge about that. It is the first year. It is very early and parliaments are thinking and consulting each other. They came to COSAC and they came to the EP and they will decide.

DRG: Yes it is true that it is quite early in that sense. But taking about the parliamentary control of Europol and the idea to do it with the EP.

LR: It is in the Treaty.

DRG: Yes, but this is being discussed since 2002. There was a COM recommendation on establishing a joint scrutiny committee. So this is an issue that is coming up regularly and apparently it is not really growing. It comes and it disappears.

LR: Because it is only now that is on the Treaty. And parliamentary democracy has been developed. You know what the role of national parliaments was 20 years ago and what it is now. When there was not a single reference to national parliaments in the body of the Treaty. Now we have references to national parliaments all over in the Lisbon Treaty. And national parliaments are involved more and more and more. It is evolution. Nothing is in grave and stone.

DRG: Is it this tendency welcomed by national parliaments?

LR: Of course.

DRG: Do you mean the tendency of strengthening the role of national parliaments?

LR: Of course. They were members of the Convention on the future of Europe and that is when this tendency became very apparent.

DRG: But if one looks at European scrutiny or debates in national parliaments this is something that is not having much attention. Some members do not even want to be involved in.

LR: That depends on the parliament.

DRG: The question is: yes, national parliaments have more possibilities to be involved, but are national parliaments willing to take their role? Or more specifically are MPs willing to loose their time to come to Brussels. Why to Brussels and not to Madrid or to Paris?

LR: Because European Affairs is part of their daily affairs. And legislation at EU level is broader and broader. And they have to know and they have to be informed. And they have to know the right to scrutinise and to see that the principle of subsidiarity is respected. And you do that on your own and together. I know this opinion that national parliaments are the biggest losers of the integration. But the Lisbon Treaty gives them know the possibilities and the tools to be involved not only in the scrutiny at national level but to participate in interparliamentary cooperation and it is my personal opinion that national parliaments are very interested on that, they participate. And COSAC as one of the fora is extremely popular. No only as political decision-making body but also as a social gathering. So I do not see any danger. I can only see the role of national parliaments becoming more and more important. It is a shared responsibility for EU decisions that is now being not only the MEPs but also MPs. So what the Lisbon Treaty gives is this broader democratic legitimacy and it gives the possibility to share the responsibility for the decisions that are taken at EU level between MPs and MEPs.

DRG: Parliamentary control of JHA an opportunity for interparliamentary cooperation?

LR: I would delete the question mark because it is on the Treaty. Once it is in the Treaty it will happen. The question is in one form. But for me there is no question on whether there will be interparliamentary cooperation in that area. There will be, the question is when and in what form.

DRG: Yes. That is why the question mark is there. Although the Treaty only shows what it is legally possible but if there is no political will...

LR: But there is because imagine how expensive it is this cooperation. And issues like immigration, illegal immigration they are politically highly tense. Terrorism also is an enormous important question and it is not only for members of the EP but also for MPs so yea, this cost a lot and to leave it only for intergovernmental decision-making is... so maybe...

DRG: But your first remark was that some national parliaments are already making their own scrutiny

LR: Yes, but at the national level.

DRG: Yes, at national level. But we could easily see that one parliament would say, well we do it ourselves it is fine, we do not need to waste our time.

LR: But what can one parliament do about Europol in The Hague, which has 200 administrative staff, and it is growing.

DRG: Yes

LR: You know how expensive that is. So one parliament imagine when they call their national member of Europol what can they say? But when you put together...

DRG: I agree with that and that is part of my argument. But before the entry into force of the Lisbon Treaty and with another legal framework for Europol it was possible for national parliaments to cooperate. And it was possible for national parliaments to involve the EP and it never happened. But how do you that?

LR: In the EP Interparliamentary Committee Meeting no body is willing to take decisions that are binding national parliaments. There are not conclusions on the Interparliamentary Committee Meetings in Brussels. They just came and chat and exchange practices. COSAC adopts conclusions and contributions. And some parliaments that replied to our questionnaire said 'COSAC should monitor the implementation of Article 12 using its contributions. It means that some provisions of the article if they are not implemented correctly or national parliaments are not happy about the implementation they can be discussed in COSAC. With the participation of specialized MPs, legal affairs, or Justice and Home Affairs, they came together we adopt contribution send to the EU institutions published in the official journal and you have a product a result. In the EP we do not have such results and even if national parliaments say what they think it never develops into a common position of the EU parliaments. Here is the answer for you. It was impossible at the EU level. Before the Lisbon Treaty it was impossible.

DRG: It was impossible to have than binding text resolution.

LR: Although COSAC resolutions are not binding on national parliaments. But that is the opinion of national parliaments. It is time now for COSAC to be the monitor of the role of national parliaments under Article 12.

DRG: So is COSAC ready to be a political body?

LR: Some parliaments think it is not time yet. This is the opinion of one of the very important parliaments, French Assemblée Nationale.

DRG: Yes. It is one of the opinions but there are others.

LR: With the Lisbon Treaty we are thinking about new innovative Interparliamentary Committee Meeting format. In this new format, which nobody wants expect for a few, they would foresee the representation of the EP much more stronger 35-40 members while national parliaments will have six members. The big question is will national parliaments agree? For me the answer is clear. The EP is free to suggest this. The EP is offering the premises; they are also offering the Secretariat support. The question is whether the House of Lords, the Bundestag and the French national assemble will agree with this clear dominance and leaderships of the EP in matters like this. Especially in view of the Article 12 where national parliaments have their own space for activities.

DRG: I know about the House of Lords but it is not so clear for me that some parliaments would not agree. Some parliaments take a more passive approach.

LR: I would suggest that you read our next report and you read about the financing of new forms of interparliamentary cooperation. The answer are no, no. We do not need any new structures or if we do it has to be within the current budgetary restrictions. There are parliaments that are very careful. Some do not have any opinion. It is still early. But even those who suggest creating new structures they are very reluctant to additional funding.

DRG: But which new interparliamentary fora are we talking about?

LR: The ones that you will read about in the next biannual report.

DRG: But are those the so-called joint parliamentary committee meetings etc?

LR: Yes these are the fora of the EP.

DRG: These are not new?

LR: No, these are not new.

DRG: These are the fora suggested?

LR: Yes by the EP. But there are other parliaments suggesting other things. National parliaments have their own ideas.

DRG: What are those ideas?

LR: I cannot give you any details because it is too early

DRG: Yes, I understand. So there is a possibility that there will be the fora will be of the COSAC.

LR: Yes of course. Because of the Protocol Article 10. It is there: the exchange of information, to debate things and the fact that they can organise conferences on specific topics.

DRG: Related to this, can we observe a tendency that the composition of COSAC changes?

LR: No.

DRG: Well what I mean is if the composition of the delegations changes according to the topic that is discussed?

LR: Article 10 of the Protocol provides for the involvement of specialised committees in the role of COSAC.

So it is there in the Treaty and it is possible. There are parliaments who agree with that and parliaments that are reluctant. There are parliaments that currently parliaments that have members in European affairs committee that also work in specialized committee. This is the case of the Lithuanian parliament. The committee of European Affairs consists on members of other specialized committees. According to rules of procedure of the Lithuanian parliament a member of the parliament can only work in one committee but this does not apply for the European affairs committee. So it is a strong committee that brings together the expertise and the opinion of other parliaments. A similar system is the House of Lords which has subcommittees but also the Swedish. So these committee are free to send to COSAC the delegation adjusted to the agenda. Every parliament is free to choose the composition of its delegation that should have up to six members. The question is have we seen the tendency? I can't tell you. Because when MPs register for COSAC they do not tell us where they work. We only register as the chairperson of the committee or MPs.

DRG: I have been looking at it and only with the data from chair members you could tell that when JHA was on the agenda there were chairpersons of JHA committees.

LR: So I can say I saw the evolution.

DRG: So, is there a trend for the specialisation of COSAC?

LR: Of course. If COSAC decides to organise interparliamentary committee meetings it is in the interest of COSAC to open the possibility for members of specialized committee to come to COSAC meetings. And I have to tell you that Danish parliament has tabled an amendment to the rules of procedure to allow members of other committees to join the COSAC delegation.

DRG: But this is already happening?

LR: Every parliament has an autonomous right to decide who comes to COSAC. Some parliaments have specific delegation that is for the whole term like Luxemburg. Other parliaments decided on the occasion. Every parliament decides on its own. But in the rules of procedure it is said that COSAC is the conference that unites members the EACs so in those parliaments like the Italian where EAC is a committee which does not have the link to specialized committees it is not possible for members of specialized committees to join the COSAC delegation. So there is a need to amend the rules of procedure to open up this

possibility. The Danish so that Article 10 of the Protocol allows for specialization so they want to change the rules of procedure.

DRG: Is there a specific position from the EP regarding the change of the rules of procedure?

LR: No, we do not know. The EP adopted in 2009 a report on the development of the relationships between NP / EP and they said that they would like their members of specialized committees to be more involved in the work of COSAC. So the EP is for the specialization of COSAC.
The EP has very clear opinion.

DRG: Are there different levels of participation in COSAC for different parliaments?

LR: I would say towards COSAC it is always very positive. And I do not see any member that is not participating in COSAC. COSAC is considered the biggest and the most important Interparliamentary Committee Meeting during the presidency semester. It always takes place in the presidency country and parliaments are always very eager to come. With the financial constraints maybe parliaments are not sending full delegations as they did. Or in case of elections they do not send people because they are not elected etc. I do not see any difference in the attitude of parliaments towards COSAC.

DRG: But for example if we look at biannual reports and their questionnaires one can tell that there are differences on the replies and the quality of them.

LR: Of course, it all depends on... You know who is drafting the replies? The staff and when the question is political they are approved by the committee or by the chairperson. But it does not mean that if you have an answer yes no, no opinion etc that the parliament is reluctant to work in COSAC. It is just that some parliaments have very strong administrative support and they have opinion on everything and others don't.

DRG: But is it the secretarial support and resources that makes the difference?

LR: Of course. And experience. The Spanish parliament has only two people. I will not judge about the parliament attitude towards COSAC by the responses to the biannual reports.

DRG: But it is a measure of how much information is shared with other parliaments.

LR: This time we asked them about strategy 2020. And parliaments have look at it and some haven't. So some parliaments just said that they do not have a look at it. And this has nothing to do with the attitude towards COSAC.

DRG: No. But when you see that constantly some parliaments are making references to a report they have done etc.

LR: Like House of Lords, right?

DRG: This in my opinion is a positive attitude towards sharing of information, influencing other parliaments etc. And some parliaments just do not do it.

LR: Because they do not have the reports. The House of Lords is a document-based system. They look at the proposals and they draft the reports. And that is very interesting information not only for them members but for other parliaments as well and for us too. But other parliaments concentrate on mandating. They do not draft reports so what do they send. They just send a political opinion or an administrative opinion. They cannot append the report because it is non-existent in their parliamentary practice. What they can append now is the resolutions of the committee but they do not happen in every plenary.

DRG: Yes.

LR: So that is your answer. It is the different practice of different parliaments. Some produce reports and some don't. Some concentrate on mandating and mandating is done behind closing doors and you do not want in any case to show your cards.

DRG: Not in COSAC but there where in Rome the Assizes. And the opinion is that National parliaments were scared about the attitude of the EP. Is there, that you can tell about, this feeling of no trust.

LR: No comment. It is not for me. You understand my position. My personal opinion is not. I think is artificial. For record no comment.

DRG: I am just asking that because there are other formats in which the EP has more capacity to control agendas etc. The parliamentary control of Europe has been discussed in COSAC but at what stage are we?

LR: Search, decision-making short of reflection period. These debates were in preparation of the Lisbon Treaty. Every one knew that if the Lisbon Treaty was approved there was going to be a provision that national parliaments together with the EP will have to control Europol. So they started to think then. Now the Treaty is in force and the COSAC looking at how to do that the EP is a looking at it.

DRG: Yes but the commission is delay.

LR: In the action plan for the Stockholm programme they have stated very clearly the date when they will adopt a communication and the regulation. There will be two communications next year and the there are two regulations. One is in 2012 and the other one in 2013. You cannot do anything before.

DRG: Yes but some parliaments have already expressed concerns of why should it take so long.

LR: Well can't the COM. It is a very important decision. The question that I would raise is: should national parliaments wait for the COM. Or should they discuss and decide now. Why should they wait for the COM's consultation?

DRG: I made this very similar question to some representatives of national parliaments and some just gave for granted that they have to wait.

LR: I know it is in our biannual report read it, in a week time. Some parliaments are telling us it is a little premature let's wait for the COM and they we will a discussion. Other parliaments say we do not need to wait.

DRG: What makes the difference for one parliament behaving like that?

LR: I do not know. I cannot tell. Every parliament is autonomous and sovereign. And they decide on their own. Of course there is always the possibility to consult you neighbour parliament your regional parliament etc. Like the Baltic and Poland they meet before COSAC (to discuss the agenda and have a common position). The same happen with the Visegrad countries. Every parliament is free to find allies. They are always doing that. There is always the possibly of alliances and there will be alliances now specially after this meeting in Brussels there will be alliances in CFSP. But I cannot comment on how these decisions are taken in individual parliaments.

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Mr. Josep Maria Ribot
Administrator at the European Parliament
(General Directorate for Relations with National parliaments)

Daniel Ruiz de Garibay: En el tema de la cooperación yo observo los diferentes parlamentos tienen diferente modo de afrontar el tema.

Josep Maria Ribot: Evidentemente. Los parlamentos de la EU se caracterizan por una diversidad de funcionamiento, de prioridades etc. Entonces eso se refleja claramente en como cada parlamento nacional y a veces incluso cada cámara en los parlamentos bicamerales realiza sus relaciones con el Parlamento Europeo y los demás parlamentos nacionales. Esto está muy claro. Hay parlamentos más activos. Pero el gran reto de cualquier parlamento es el control del gobierno. Y en este caso el control del gobierno en los asuntos Europeos. Aquí encontramos la primera diversidad. Hay parlamentos que hacen un control muy estricto a priori de la participación de sus gobiernos en el Consejo. Y hay otros que este control o es muy ligero o es un control a posteriori. Un ejemplo de ese control a priori es el parlamento Danés o el Finlandés y un ejemplo de un control más bien a posteriori puede ser el caso Español. Ésta es la primera diferencia. Otra diferencia es la importancia de la Comisión de Asuntos Europeos. En algunos ésta tiene mucha relevancia y mucho peso y en otros no. Por ello al papel de ese parlamento en la COSAC se le da menos importancia. Hay parlamentos en los cuales el presidente de la cámara tiene un peso político y hay otras cámaras en las que esta figura es simplemente institucional. Esto influye también en la cooperación en la conferencia de presidentes. Según el rango constitucional de los diferentes órganos unas cámaras tienen una actividad mayor que otras. Lo que observamos es que hay cámaras hiperactivas, tanto en lo que se refiere al envío de opiniones o el dialogo informal, como pueden ser la asamblea portuguesa, algunas cámaras nórdicas, el Bundestag, y otras cámaras de las que prácticamente no sale nada. También en el ámbito de las relaciones interparlamentarias observamos que hay cámaras que tienen un mayor interés en la cooperación y que asisten con mucho interés y que asisten permanentemente y otras que a veces no envían ni si quiera una delegación o que vienen muy pocas personas. O que vienen diputados o senadores que ellos personalmente tienen interés en asistir. Pero que no hay una visión muy estructurada en esas cámaras para asistir a esas reuniones. También puede ser que hay un factor que juega en este ámbito que es el del calendario. Hacer coincidir todos los calendarios es difícil. Pero en este año estamos un poco en periodo de pruebas. Con el Tratado de Lisboa ya en vigor. A finales de mes tenemos la reunión de la COSAC y hace unos días hubo una reunión en la comisión AFCO sobre el papel futuro de la COSAC y es un debate que está abierto. A mi juicio la COSAC debe redefinir su papel. Seguirá existiendo pero lo que observamos es la gran importancia de comisiones especializadas homologas. Para tratar temas concretos. Porque la COSAC trata temas generales y no reprende a los parlamentos porque solo son las CAE. Y en algunos parlamentos ésta es una comisión de poca relevancia. Entonces lo que está en juego es ver como evolucionan estas reuniones de comisiones y en qué queda el papel de la COSAC.

DRG: Si, eso es muy interesante. El tema es que el Protocolo de la COSAC da la posibilidad de hacer conferencias en temas concretos y cambiar información a nivel de comisiones. Y en la COSAC existe la intención de cambiar las reglas de composición.

JMR: No se si esa es la opinión de la COSAC o del secretariado permanente de la COSAC. La COSAC son los miembros de la COSAC y no el secretariado permanente. Yo no creo que sea esa la tendencia. Lo que ningún parlamento quiere es que se formen estructuras dobles. Por ejemplo en el tema de seguridad y defensa se ha hablado de hacer una COSAC bis para el tema de seguridad y defensa. Esa opción es rechazada por todo el mundo. No quieren una estructura nueva. La ventaja que tiene el parlamento Europeo sobre los otros parlamentos es que el Parlamento Europeo tiene ya los servicios de traducción etc, entonces organizar estas reuniones interparlamentarias sobre temas precisos le resulta más fácil. Es utópico plantear reuniones temáticas en COSAC. El Parlamento Europeo hay parte de gente que tiene una visión crítica de la COSAC porque en la última COSAC se hicieron apreciaciones críticas sobre el acuerdo marco Parlamento Europeo y la Comisión que se ha estado negociando este año. Y el Parlamento Europeo se sintió un poco agredido. Cómo vamos a admitir que un órgano del que somos miembros nos critique. El Parlamento Europeo no quiere que la COSAC desaparezca pero tampoco va a permitir que esta tenga un papel más importante y que se desarrolle ad infinitum en diferentes temas. Para eso ya tenemos las reuniones que se hacen a escala del Parlamento Europeo que también los propios parlamentos durante sus presidencias han ido adoptando la costumbre de hacer encuentros de presidentes de comisión. Pero hay un tema esencial y es el que el Parlamento Europeo dice que hablando de cooperación

interparlamentaria en los temas competencia de la Unión Europea el legislativo sigue siendo el Parlamento Europeo y el Consejo y allí los parlamentos nacionales no tiene nada que decir. Esta muy bien el intercambio de información, los debates las aportaciones de los parlamentos nacionales pero el legislador Europeo son el Parlamento Europeo y el Consejo. No son los parlamentos nacionales. Y por eso el Parlamento Europeo es el primer interesado cuando hay una propuesta legislativa y se considerad que es necesario abrir un debate con los parlamentos nacionales para trabajar mejor. Pero el Parlamento Europeo junto con el consejo sigue siendo el maestro. Ir más lejos ésta excluido.

DRG: Pero hablando de control parlamentario?

JMR: Los parlamentos nacionales tienen el control parlamentario sobre la actuación de su gobierno. Y esta es una de las tendencias que tenemos que ver. Hay dos vías. Los parlamentos nacionales pueden optar por cooperar con el Parlamento Europeo para que las propuestas legislativas sean mejores. Pero el peligro puede ser que los gobiernos quieran utilizar a sus parlamentos nacionales para criticar las propuestas. Y aquí la clave es la relación de cada parlamento con su gobierno. Hay parlamentos que lo único que hacen es reflejar la opinión del gobierno. Hay otros parlamentos que son más críticos. En el caso Español yo diría que es un parlamento que en el fondo sigue lo que hace el gobierno. En el caso Danés es diferente hay un rol parlamentario más clásico.

DRG: Tiene esto que ver solo con el hecho de que generalmente son gobiernos de minoría.

JMR: Puede que eso influya. En España el sistema parlamentario está un poco debilitado porque se prefirió tener mayorías amplias para tener estabilidad política. También hay más proyectos de ley que proposiciones de ley que son las que lanza el parlamento. Es decir que la legislación que se lanza en España viene del gobierno. Pero el control los parlamentos nacionales lo deben ejercer sobre su gobierno. Y con el Parlamento Europeo las cámaras nacionales lo que pueden hacer es cooperar para mejorar la legislación. Pero también podemos ver que los parlamentos nacionales intenten llevar al Parlamento Europeo posiciones que en el fondo son las posiciones de sus gobiernos que luego el gobierno defenderá en las negociaciones con el Parlamento Europeo. Pero todavía no sabremos qué sucederá. Hay una evolución y los propios parlamentos están buscando cómo encajar. También hay una precisión que hacer y es que cuando hablamos de parlamentos nacionales hay que tener en cuenta que no hay una voz única de los parlamentos nacionales. Hablamos de relaciones con los parlamentos nacionales pero en realidad el Parlamento Europeo tiene relaciones con cada parlamento nacional. Buscar un órgano que coordine las voces de los parlamentos nacionales, y que en este momento no es la COSAC, ¿podría existir esto?, es muy difícil.

DRG: ¿No es la COSAC?

JMR: Desde el Parlamento Europeo se considera que no es la COSAC. Lo que ocurre con la COSAC, y lo vimos en la última reunión en Madrid, es que hay unos parlamentos hiperactivos y luego una mayoría silenciosa que acepta lo que se decide. Porque también el problema de la COSAC es que en el fondo es un órgano que se encarga de un intercambio de opiniones sobre diferentes temas pero que en el fondo luego también adopta unas conclusiones y recomendaciones. Que no son esencialmente votadas y que muchas veces, por lo yo vi en la última reunión en Madrid...

DRG: ¿No se vota?

JMR: No

DRG: Según las reglas se vota

JMR: Bueno las reglas están ahí pero las concusiones las propone la presidencia. Yo solo las vi votar en Madrid percidamente porque había este conflicto en algunos temas que el Parlamento Europeo no aceptaba algunos párrafos hubo necesidad de votar.

DRG: Pero si se ha aceptado que se cambien las reglas y que se pueda votar las resoluciones es como si fuesen votadas.

JMR: Es lo que está a la vista. Pero en principio una reunión en la que los participantes no representan a las cámaras.

DRG: ¿En qué sentido no representan a las cámaras?

JMR: Es una reunión de CAE. Es como los *Joint Parliamentary Meetings* que organizamos en el Parlamento Europeo con el parlamento de la presidencia, en esto encontramos las delegaciones de los parlamentos nacionales que vienen aquí no tienen mandato de sus cámaras para decir nada. Pueden hablar porque para eso se viene pero un mandato para establecer conclusiones o recomendaciones yo no se hasta que punto. En cambio la COSAC si que lo hace y muchas veces lo que ocurre es que esos textos están preparados por la troika y simplemente son aceptados por el pleno. Yo me pregunto si es necesario tener ese documento. No tengo mucha experiencia en la COSAC pero en la última que estuve en Madrid me dio la sensación que muchos de los temas que se figuraban en el texto que se aprobó ni si quiera habían sido objeto de debate. Al menos no hubo debate parlamentario, igual había habido intercambios escritos de presentación de enmiendas pero debate sobre los temas no. Lo que se ha sugerido en el Parlamento Europeo es que si nosotros queremos evitar que nos critique la COSAC tenemos que trabajar mejor en la COSAC, trabajar mejor en la Troika. Hacer mejor el trabajo preparatorio para asegurarnos que el resultado luego en la plenaria será al menos aceptable. Veremos pero yo creo que también importa mucho el parlamento que ejerce la presidencia en lo que se refiere a la COSAC. Hay parlamentos que quieren gestionar más ellos la COSAC en vez de dejar las cosas al secretariado. Pero hay algunos que los dejan en manos del secretariado.

DRG: Pero entonces la propuesta de cambiar la composición de la COSAC para que represente a los parlamentos nacionales.

JMR: Yo no he visto los documentos, para esta próxima COSAC. Todo está abierto. El debate que hay ahora es el futuro de la COSAC y esa es una de las posibles alternativas. Pero no creo que vaya a suceder. Eso cambia la naturaleza de la COSAC. Que además está en el Tratado de Lisboa no con el nombre de COSAC si no con el nombre de Conferencia... pero eso sería contradictorio con la necesidad de cambiar las reglas para que sea otra cosa que la de asuntos europeos. La COSAC tiene que seguir como la conferencia de Comisiones de Asuntos Europeos pero lo que hay que mirar mejor es los contenidos de estas reuniones y los resultados. Porque dada la práctica actual va a ir en incremento las reuniones interparlamentarias sobre cuestiones concretas. Está también por ver cual es la fórmula que se adopta para trabajar en la cooperación en el ámbito de la seguridad y defensa. Que es el ámbito que interesa mucho al Parlamento Europeo E, que ha ganado alguna competencia con el Tratado de Lisboa, pero que no deja de ser un ámbito que es más bien competencia de los parlamentos nacionales. Desaparece la asamblea de la UEO que aunque no se ocupase de esto es la que mucho parlamentos nacionales tienen de referencia para los temas de defensa. Con lo cual ellos quieren algo que reemplace a esto, pero el Parlamento Europeo no está de acuerdo. Entonces el debate en los próximos meses va a ser qué tipo de foro, qué tipo de reunión se utiliza para que los parlamentos nacionales y Parlamento Europeo puedan debatir conjuntamente y controlar en la medida que sea posible por cada cámara los aspectos de la política de seguridad común y de defensa común. Y en este ámbito una COSAC II parece que nadie lo quiere. Con lo cual no veo tampoco una COSAC II para temas de libertad seguridad y justicia. Veo que la propia COSAC se está quedando vacía de contenido.

DRG: Pero paradójicamente tiene más poder.

JMR: Exactamente. Porque el tratado no reflejó lo que era la evolución. Es un tema que aparece como menor, se introduce el papel mayor de los parlamentos nacionales. También para que los parlamentos nacionales en la Convención pudieran aceptar el mayor papel del Parlamento Europeo, es un juego doble. Pero no se había detectado todavía esta tendencia de la cooperación parlamentaria a nivel de comisiones. Y además lo peor es que las comisiones de asuntos europeos los miembros que las forman no son expertos en ninguno de los temas que luego podrían tratar. Por ejemplo en la reunión de LIBE todos son miembros de comisiones de justicia mientras que si se hace esa discusión en la COSAC no es así. Ese es el gran debate que debe tratarse.

DRG: En COSAC el Parlamento Europeo es simplemente una delegación más.

JMR: Sí pero es el problema del Parlamento Europeo. Por eso el Parlamento Europeo tiene esa visión escéptica sobre la COSAC y en cambio es más partidario de las reuniones interparlamentarias. En la COSAC a veces se percibe un poco el 128 contra 6. En la última reunión de la COSAC se percibió que el Parlamento Europeo queda un poco aislado. Porque aunque las opiniones críticas sean minoritarias hay una mayoría silenciosa que hace que es opinión crítica parezca mayoritaria.

DRG: ¿Y que se puede deber?

JMR: El parlamento más agresivo fue el Parlamento Finlandés, es un parlamento muy importante en todo lo que es el control de los asuntos europeos. Entonces arrastra otros parlamentos, el Danés, el Sueco, los Bálticos. Mientras que el resto queda diluido. Los parlamentos de los países nuevos son muy nuevos, Hungría, Bulgaria y no tienen tanta experiencia. El parlamento Italiano se suele alienar con el Parlamento Europeo. La experiencia en este tipo de reuniones cuenta mucho. El Parlamento Europeo ha ido más bien con una actitud defensiva y a lo mejor ahora tiene que adoptar un papel de líder. Ahora se ha creado un *steering group* para relaciones con los parlamentos nacionales que permite que haya un órgano político para definir hacia donde quiere el Parlamento Europeo que vaya la cooperación interparlamentaria. Hasta ahora esto no se tenía.

DRG: ¿Es un órgano político?

JMR: Deriva de la mesa y de la conferencia de presidentes y está compuesto por los vicepresidentes encargados de relaciones con los parlamentos nacionales más un diputado de cada grupo político y el presidente de la conferencia de presidentes de comisión. Antes había habido la resolución Napolitano, Anemines y ahora Brook pero estas son simplemente resoluciones. Un órgano político tiene más fuerza.

DRG: Pero la COSAC no es el único órgano

JMR: No. Pero es el más conocido. Vamos a hacer precisiones. Los Joint Parliamentary Meetings es un tipo de reunión nuevo que existe desde 2005. Ha ido evolucionando. Son co-organizados entre Parlamento Europeo y parlamento del Consejo de la Unión Europea. Las reuniones son presididas por los presidentes de ambas cámaras y el tema que se intenta encontrar es horizontal. No solo de una comisión. Y muchas veces es un tema ligado a la actualidad y que sea un tema a discutir en el Consejo siguiente a fin de que haya un input parlamentario para ese Consejo Europeo. Y la dinámica de desarrollo es una dinámica paritaria. Dos parlamentarios nacionales por uno europeo y la delegación del Parlamento Europeo es de 60 miembros y las de los parlamentos nacionales de 6. Hay una cierta paridad en cuanto a la participación. Es un tipo de reunión que tiene un grado de satisfacción bastante elevado porque permite a los parlamentos nacionales debatir con los principales interlocutores europeos sobre temas de actualidad, algo a lo que el Parlamento Europeo está más acostumbrado. A diferencia de la COSAC no tiene conclusiones ni un informe final, pero sirve para escuchar opiniones diversas. Y para los parlamentos nacionales es importante porque pueden escuchar que está pasando en el Parlamento Europeo en esos temas porque los MEPs que participan en la delegación son los diputados que han sido elegidos por sus grupos políticos en función del tema de la reunión. Tenemos otra cosa que son los joint committee meetings pero cuya denominación deberíamos cambiar porque el concepto de Joint Committee Meetings según la última reforma del parlamento es para las reuniones conjuntas de comisiones del Parlamento Europeo. Así que el término es interparliamentary committee meeting. Y esas son como la que has asistido tú de la comisión de libertades públicas. Se reúnen con sus homólogos en los parlamentos nacionales. No se utiliza demasiado este sistema porque para las comisiones del Parlamento Europeo resulta muy pesado hacer toda la preparación con el parlamento de la presidencia. Y en los últimos casos los parlamentos de la presidencia no han estado muy interesados en este tipo de reuniones. Logísticamente es complicado porque hay que ponerse de acuerdo sobre muchas cosas.

DRG: Pero al menos formalmente en el Joint Committee Meeting la agenda se decide conjuntamente.

JMR: Sí, pero por eso no ha habido en los últimos años.

DRG: ¿En el que no es joint no se decide conjuntamente?

JMR: Exactamente, puede haber contactos. Pero la agenda la marca la comisión organizadora del Parlamento Europeo. Lo mismo sucede en las reuniones interparlamentarias organizadas por el parlamento de la presidencia en su parlamento que también son a veces a nivel de comisión.

DRG: Hablando específicamente del caso de LIBE y el control de Europol, algunos representantes de los parlamentos nacionales aprueban este tipo de encuentros pero se quejan de que no tienen ninguna decisión en la agenda.

JMR: Vamos a ver. LIBE es la comisión que más a desarrollado este tipo de reuniones interparlamentarias en los últimos años. Los temas de LIBE son tan importantes y están un poco en los ámbitos nacionales y europeos. Entonces esto presenta una situación especial y hay que prestar una atención muy particular a LIBE. No sabemos como evolucionará. Pero es verdad que para las comisiones del Parlamento Europeo y para LIBE tener que gestionar la preparación de una reunión interparlamentaria con un parlamento nacional es muy complicado. No solo a nivel logístico. Hay que tener en cuenta que los ponentes del Parlamento Europeo no quieren que nadie se inmiscuya con ellos. Los representantes de los parlamentos nacionales son funcionarios como nosotros y no se si sus miembros piensan lo mismo que ellos. Durante la legislatura de cinco años la comisión del Parlamento Europeo siempre es la misma mientras que en los parlamentos nacionales van variando. Es mucho más difícil construir un dialogo interparlamentario a nivel de comisiones si hay que negociarlo todo que si se hace una reunión. Porque al fin y al cabo el Parlamento Europeo no tiene necesidad de hacerlo, no está obligado. A lo mejor en el caso de LIBE es diferente. Pero en el caso de la comisión de medio ambiente, que es una comisión de gran relevancia en el Parlamento Europeo, ha rechazado hacer durante mucho tiempo estas reuniones, porque tiene una agenda muy cargada. Lo importante es la evolución, el Parlamento Europeo ya no organiza estas reuniones para explicar a los parlamentos nacionales lo que el Parlamento Europeo piensa o dice sino que ahora se hace para hablar a los parlamentos nacionales y para escuchar. Hay un verdadero diálogo y ese el punto que ha ido cambiando a lo largo de estos años. Esperemos la evolución futura. Porque este cambio de mentalidad ha costado tiempo. Es una cosa muy simple pero ha habido una gran evolución. Pero marcar las agendas y todo es muy difícil. Muy difícil y lleva mucho tiempo. Así que las comisiones del Parlamento Europeo sobre todo aquellas que tienen una carga legislativa más importante son un poco reacias a aplicar este modelo de co-organización. Esto se aplica en los *joint Interparliamentary Committee Meetings*.

DRG: Pero en el caso particular de LIBE y el control de Europol...

JMR: Creo que en el caso de LIBE hay que buscar formulas ad hoc. La opinión del secretario general del Parlamento Europeo es focalizar la cooperación parlamentaria en un serie de áreas el tema de LIBE, tema presupuestario y asuntos exteriores. Es decir para el Parlamento Europeo esas son las áreas prioritarias. En las que hay que hacer un esfuerzo especial para buscar formulas que realmente respondan a lo que el Tratado de Lisboa exige. De esto no te puedo decir mucho más pero Emilio De Capitani tiene muy buenas ideas y lo ha escrito y tiene claro lo que hay que hacer y es muy activo.

DRG: Mi curiosidad es porqué desaparece la palabra *joint*... es un intento del Parlamento Europeo de llevar el liderazgo.

JMR: No, es más bien porque hay una dificultad logística y de preparación muy importante si se hace conjuntamente. Porque otra cosa es que se haga un meeting sin ser *joint* pero que se decida co-presidir con el presidente de la presidencia. Pero entrar en todos los puntos de la agenda hay mucha reticencia a nivel de nuestras comisiones. No es tanto por llevar el liderazgo. Porque en si cada vez las comisiones especializadas van adoptando temas concretos que estén en su propia agenda para reuniones interparlamentarias, no es que el Parlamento Europeo quiera imponer la agenda, es que eso es lo que se necesita tratar e interesa tener el input de los parlamentos nacionales. A ellos también les tiene que interesar porque unos días después les llegarán las propuestas a sus parlamentos y tendrán que pronunciarse o en el momento de transposición tendrán que dar su opinión. Y el tema de la transposición le interesa mucho al Parlamento Europeo, en cambio los parlamentos nacionales no quieren informar tanto. En unos casos porque no es su competencia y en otros porque no les interesará. Pero no es una voluntad del Parlamento Europeo de guardarse la iniciativa porque luego el Parlamento Europeo también participa cuando puede en las reuniones interparlamentarias organizadas por la presidencia, sobre el tema que ellos deciden. Que son las reuniones que se celebran en la capitales nacionales.

DRG: ¿Pero todos estos encuentros, qué efecto tienen en cuanto a control parlamentario?

JMR: Muy poco. Es más bien un poco intercambio de información capacidad de que el Parlamento Europeo asuma ideas de los parlamentos nacionales a la hora de presentar sus propias enmiendas a las propuestas de la Comisión a través del informe que realiza el Parlamento Europeo. Pero también es un sistema de alerta para que cuando el gobierno vaya con estos temas a los parlamentos nacionales los MPs ya estén alertados.

DRG: ¿Pero los parlamentos nacionales lo ven así?

JMR: Algunos lo ven como tenemos que ir a Bruselas para tal. Pero yo creo que algunos lo vas viendo más como un oportunidad para estar al día de cosas y poder controlar mejor a su gobierno.

DRG: ¿De que depende?

JMR: Depende un poco de cada parlamento. Si aquí vienen dos MPs tampoco pueden influir mucho. Por eso era buena la idea del informe Brook de hacer más reuniones de ponentes. Pero aquí nos encontramos con un problema que es que el Parlamento Europeo tiene un ponente para cada propuesta de la comisión. Pero en los parlamentos nacionales no hay sistema de ponentes. Llevar a la práctica esta idea es muy difícil. Es el problema de la diversidad. Ahora está por ver lo que pasará en el futuro. Algunos aspectos del papel de los parlamentos nacionales a nivel Europeo es muy teórico pero en la práctica no se si dará gran cosa. Como no sea esa capacidad de los gobiernos para tener más margen de maniobra para debilitar al Parlamento Europeo, un freno en la negociación.

DRG: Pero de todas formas las opiniones del los parlamentos nacionales son positivas

JMR: Si, que no tendrían ni que mandarlas. Y muchas opiniones entrar en temas de contenido. Y las instituciones Europeas solo están obligadas a actuar en caso de ruptura del principio de subsidiariedad. Y llegar al numero de votos también es difícil. Lo importante del dialogo interparlamentario que establece el tratado de Lisboa es crear una mayor conciencia de los temas europeos en los parlamentos nacionales más que el aspecto negativo de la subsidiariedad. La comisión ya hace su propio control de subsidiariedad y el Parlamento Europeo también en la comisión de asuntos jurídicos. Con lo cual es ir mucho a mirar muy en detalle. Y las cámaras que forman un tercio deben ponerse de acuerdo.

DRG: En el caso concreto de España, es mi percepción que su participación a nivel de encuentros interparlamentarios es más bien baja.

JMR: Bueno, la participación en encuentros interparlamentarios todavía, no es enorme en algunos casos es mediana. Muchas veces está más presente el congreso que el senado. Por razones, me imagino, de agenda. La presidencia ha sido muy activa y en la preparación de la COSAC el parlamento Español tomó las riendas del asuntos completamente. Ellos dicen que tiene falta de recursos. Pero es verdad que no es un parlamento muy activo en el tema europeo. La Comisión Mixta se reúne muy poco cuando se reúne lo hace por muy poco tiempo. Personalmente pienso que hay mucha calidad intelectual en el congreso de los diputados por parte de los letrados que saben mucho y conocen muy bien los tratados pero políticamente el papel del parlamento español es limitado. A pesar de actualmente y en otras ocasiones la Comisión Mixta haya sido presidida por gente muy valiosa como es ahora Miguel Arias Cañete. Si comparamos con otras cámaras desde luego a mi juicio no tiene color. Pero es verdad que igual ellos hacen un seguimiento muy profundo de los temas, porque yo he visto informes que son bastante importantes y bien hechos y testimonian de una gran calidad académica y de conocimientos por parte de los secretarios de las comisiones. Pero políticamente son poco activos pero esto obedece a que en el fondo la cámara está par dar su apoyo al gobierno, pero no para intervenir en los asuntos europeos. Habría que cambiar la mentalidad. El gobierno español solo va al parlamento a dar cuentas del consejo pero no va antes a preguntar la posición del gobierno. ¿Qué margen tiene la Comisión Mixta? Ninguno. Y ahora tenemos una representante de las cortes aquí, muy activa que hace su trabajo. En el caso español en los temas europeos siempre se busca el consenso. Para el debate el consenso es muy aburrido. En los debates interparlamentarios aquí los diputados españoles interviene uno en nombre de la delegación independientemente del grupo que sea. Porque ellos ven la presencia española como la representación de

España. Ha habido siempre MEPs que querrían que esas reuniones de los Joint Parliamentary Meetings en vez de tener una distribución por países se hiciese una distribución por grupos políticos.

DRG: ¿Pero quien prefiere eso?

JMR: Algunos MEPs. No todos los grupos. Los verdes y grupos más europeístas.

DRG: Así fue en los Assies de Rome. Y a los parlamentos nacionales no les gustó.

JMR: Dicen que a los parlamentos nacionales no les gustó que el Parlamento Europeo representaba un papel preponderante. Los parlamentos nacionales no estaban acostumbrados a trabajar entre ellos así que si los ponen en grupos políticos se sienten más perdidos. Porque unas de las cosas prácticas que se deben prever es que en los asientos de la delegación pueda sentarse el funcionario que va con ellos. Para asistirles. En el Parlamento Europeo eso no sucede. Los funcionarios se sientan detrás. Lo más importante es que se fortalezcan las familias políticas europeas.

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Mr Emilio De Capitani

Head of Unit of the Secretariat of the LIBE Committee

Date and place of interview: 8 October 2010, European Parliament, Brussels

*** Notes after the conversation ***

Regarding the new regulation for Europol, you could contact Victoria Amici, Desk Officer in charge of Europol at the European Commission.

Wherever the EP proposes to cooperate national parliaments do not want to do anything.

A change of culture will take place with the development of the Area of Freedom Security and Justice (AFSJ), for instance when there will be a European Judicial system.

Some MEPs do take part in interparliamentary cooperation – in my opinion it is actually MEPs who do interparliamentary cooperation. Some active members of the LIBE Committee go often too national parliaments, for examples Baroness Ludford, who goes to the House of Lords, Ms. Sophia In 't Veld MEP, Vice-Chair of the LIBE Committee, who goes to the Dutch parliament, Alexander Alvaro who goes to the Bundestag. It is MEPs that will make the difference in cooperation.

The capacity of a single parliament to affect any measure in the council is very little because of the need of unanimity.

When Europol was born no one wanted it. They have it there but they were not using it much. As an example of that I can mention that, after September 11, Europol was asked about what they had done on antiterrorism and they said that they had two national experts working on it but they have sent them back to member states – because they did not need them

In recent years Europol acquired more and more powers and relevance. Why was this? It is because of Eurojust. The development of Eurojust will force the one of Europol.

Eurojust was already created by a Council Decision; it was not like Europol that had to evolve from an international convention to a council decision. However, national parliaments are not doing anything to

provide parliamentary control over Eurojust. Why is this? Because there is no political will. And there was no political will for Europol neither.

In 2013, the Commission is meant to come forward with a proposal for a regulation of Europol that will modify the current council decision and will put in place measures laid out in the Lisbon Treaty. But before then, the commission wants a revision of Europol.

The European Parliament asked for an amendment on the Europol council decision so the new rules of the Lisbon Treaty regarding the Third Pillar would be applied. There was no such amendment. The British did not want it. So Europol now is an agency of the Third Pillar because the council decision on Europol was approved before the Lisbon Treaty, which means that the old rules and not the new ones apply.

Member states do not want the application of the Lisbon Treaty now.

The LIBE Committee is the one that tries to have more contacts with national parliaments. 'We [the LIBE Committee] are considered as traitors by other committees. Not all committees want to have contact with other national parliaments - this is the case of the constitutional affairs committee.

The Italian parliament opposes anything that has to do with having the future parliamentary control of Europol done in COSAC.

The Spanish parliament does not care; they don't do much scrutiny because they leave the issue on the hands of the government.

Interparliamentary Cooperation, especially in the Area of Freedom Security and Justice (AFSJ) should be taken seriously but it should aim at more things than just parliamentary control. For instance, it should aim at influencing strategy: parliaments should start from Article 70, which refers to the evaluation of policies.

When the agencies will work under the new Lisbon Treaty, the parliamentary control will be higher. The LIBE Committee is organising Joint Committee Meetings with national parliaments in order to establish the practice so that the future parliamentary control is done in such a format.

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Lord Bowness

Member of the European Affairs Committee of the House of Lords

Date and place of interview: 18 October 2010, UK House of Lords, London

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Lord Bowness. Now, what I am trying to research is the approach that different national parliaments have towards the parliamentary control of Europol and also especially interparliamentary cooperation. The parliamentary control of Europol done by the EP together with national parliaments

Lord Bowness: Yes indeed, and to some extent this may apply to Eurojust.

DRG: What do you think are the key aspects of the parliamentary control of Europol that the House of Lords does?

LB: Can I say that it is very important to be clear? It is accountability to parliaments not control. I do not see the National parliaments or indeed the EP controlling. I do the bodies being accountable to

parliaments for what they do and parliaments having a role in terms of commenting performance, and commenting on future structures. But it is not control. A good parallel although Europol is not a police force but a good parallel is what you find in this country where chief offices of the police are accountable to police authorities.

DRG: Yes I think the problem is with the translation from French.

LB: I don't know what the world it is. But it is accountability not control.

DRG: Is there any interest in the House of Lords on this topic?

LB: Well I think there is interest within those people who are involved in that area of activity so I mean those who are involved in the EAC are interested. If you say to me is it the topic of the day across the House the answer is possible not.

DRG: No but what I mean is whether there is an interest from the part of the House of Lords on being involved. Because some parliaments are just not following the issue.

LB: Yes, there is an interest within the European Union Select committee.

DRG: Has there been any change since the Lisbon Treaty in the way select committee work?

LB: Well, we have the... there is a difference in the sense of the subsidiarity checks. The committee has looked at proposals from the EU and has asked that question. And of course we can flag that up if we want to. We, here you ask specific this question after Lisbon, we have new procedures here particularly in JHA particularly dealing with the UK opt-in. And we do have a way now of taking the issue to the floor of the House and debate it in the appropriate cases. Ways of working are going to change in terms of the meetings on Europol, Eurojust and this sort of issues where there is an involvement with the national parliaments. Our way of working has changed. For instance by the end of November I would have been to four Interparliamentary Committee Meetings with the EP. So there has been a substantial increase in the number of the meetings.

DRG: Are those meetings welcomed?

LB: To some extent this has to be a slightly personal answer. There are some of my colleagues that do not think that those meetings are terribly useful. My personal answer to you is that I welcome them because I do not think national parliaments if they want to be involved and they want to have the opportunity to discuss these matters need to attend such meetings and to have discussions with MEPs and to build relations with the EP. I welcome them. I think we are fine there. I think we are going to find our way forward on what is the best way to do it. And what is the best format of those meetings. I mean they are inevitably taking quite a lot of time. MPs going to Brussels, for what probably involves an overnight stay however the meeting is arranged, it is taking quite a chunk of time. And I think we need to look at that and see if we are doing it in the best possible way.

DRG: I have been interviewing other people and some have told me that those meetings are not really fruitful and that they take much more advantage of meetings with MEPs of their own party.

LB: I understand that. This is why I said that we need to find our way forward. The principle of involving the MEPs is a good one. I am not sure that meetings with members of your party are necessarily the answer. You cannot guarantee that members of your own party are the chairmen or rapporteurs of a relevant committee. Of course there is a value, and I suppose that the party meeting those are those kinds of meeting in the sense which country you come from is likely to have less relevance than in another kind of forum. Yes I can see that it has a value. I think my attitude towards those Interparliamentary Committee Meetings is that some are better organised than others. And therefore some are more fruitful than others. But I think I take the view that you can say of any one meeting well there was not a huge advantage on being there but there is a great disadvantage on not having been there.

DRG: In terms of the organisation of these meetings there are different formats. Some of the meetings are called joint meetings and are organised by the presidency together with the EP etc.. but then we have COSAC

LB: Yes and some are call by the EP committees but the presidency still seems to play a part. Like the one we were at last week.

DRG: Are national parliaments better involved when they get to decide about the agenda?

LB: I do not think the worth of the meeting makes a great deal of difference how the meeting is set up. It is actually the substance of the meeting what is important. What I think and this is a personal opinion is that these meetings joint or otherwise are useful in terms of general discussions, building discussions with MEPs and to some extent MP of other national parliaments and that tends to be limited because the personalities change so rapidly with in the delegations but nevertheless. I think if are going to believe that the oversight of Europol and Eurojust is going to be carried out in meetings like that we are wrong. Because I do not think there is any real accountability in meetings like that. Scrutiny of what the organisations do will to a large extent take place by national parliaments. The end of the process maybe the kind of meetings we attended with the head of Europol Eurojust being there to address national parliaments and answering questions. But if the involvement of national parliaments in the scrutiny would be just those meetings then that is not going to be real scrutiny. So I think the real scrutiny would be done in individual parliaments. It may be that we all come together at some stage. But the idea that meetings of that kind should be the sole manifestation of parliamentary accountability will be a mistake. The problem is that those meetings are to often just an excuse for people to deliver an speech they were determine to deliver anyway.

DRG: What about the input that the EP could provide to national parliaments given the new role of the EP with the change of the legal framework of Europol.

LB: I do not know what you mean by input. I am sure there is plenty of scope for cooperation between the scrutiny committees of national parliaments and the EP. I am sure the EP can organised the, if you like, plenary of the scrutiny. But I just do not see proper accountability by national parliaments taking place just at that level. They are going to have to play some attention to it and some real attention to it back home.

DRG: But then we are in a situation in which the head of Europol has to address 41 chambers.

LB: No, that is unrealistic. But the actual scrutiny of the report, the pose of the questions this is going to be done in national parliaments. There is no reason why you cannot get a report and why you cannot put questions. The top of the process may be the kind of meeting you are talking about. I do not think you can have proper accountability relying on those meetings. Too many people, the forum is to be. The real work has to be done by national parliaments in their scrutiny committees in the first place. Of course the head of Europol will not go to 27 member states. But there is no reason why the organisation cannot answer questions from national parliaments. Just like the commission puts up a consultation paper, we do not have a hearing about that but national parliaments make their allegations and we get a response from the commission. There is also the question whether these meetings are even the right fora. You yourself mentioned COSAC. COSAC it seems to me is an organisation that a) it has the advantage of existing so it does not have to be created and we do not want to create anything new. And these kinds of scrutiny jobs are I think it bears examination on whether or not COSAC should do it. There is a lot of debate at the moment on what is going to happen with the Western European Union and the parliamentary scrutiny of the ESDP. My own view on that is that I cannot go to NATO because of the non-EU members of NATO. So I think it have to be COSAC.

DRG: But there is the question of the representativeness of COSAC. Some parliaments cannot include in their delegations members from specialist committees.

LB: I was not aware of that. And that seems to me be to a bit strange because we divide our European Scrutiny Committee in subcommittees divided b subjects. So we have a Justice and Home Affairs subcommittee so we always got people.

DRG: Yes but that is not the case in all parliaments

LB: No. But I mean that does seem to me a matter of internal management. We do not go there and say we need to create another body of chairs and members of Justice and Home Affairs committees just because some people have not sorted out the right mechanism to bring the right people to the COSAC. After all, all these things have a European dimension so there should be somebody on their committees competent to deal with it.

DRG: Yes. Perhaps this is again a technical question but what about the mandate that members of COSAC will have if they have to vote on resolutions or something like that.

LB: I do not think we are going to have a voting situation are we? We are talking about accountability if we are going to be having votes we are moving into this area of control.

DRG: What could be the advantage of a forum such as COSAC against a forum like the one the LIBE Committee organised?

LB: The advantage is that it exists already. We do not want to start creating more meetings etc. It is not a good use of time.

DRG: But since the COM is delaying the proposal until 2013 the by 2013 these meetings of the LIBE Committee will already be established. And the EP may say we already have this institution why don't we do it here?

LB: The EP may take that view. My own opinion national parliaments want to have some control over the agenda of the forum. If all national parliaments decided that they want to go along that idea I suppose that that would be the outcome. My sense is national parliaments by and large do not want to encourage the formation of new bodies. The trouble with new bodies is that it multiplies the number of meetings. And what is wrong with utilising a mechanism that we already got? I do not think there is any magic on it. You could do this thing in any of the ways that you suggest but it is really what is the efficient way of doing it. Specially bearing in mind that if there is going to be real accountability people are going to have to go into these matters in fundamental terms. It is not going to be a case of turning around for few hours and have one person from every member state making an already prepared speech and then the response from the Head of Europol. Accountability is about people looking at the thing in detail, raising real question, getting real answers. That kind of forum does not allow for that. In a sense is like a national parliament where the real work is done in committees not in the floor of the plenary. So I entirely accept that at some stage the guy that is in charged has to be available to people generally and you have to do that in a place he is not going to 27 states. But I think that is the end of the process rather than the beginning.

DRG: Sometimes relationships between National parliaments and the EP are presented a little bit like contradictory or lacking some trust or even as rivals. Do you think that is the case for JHA?

LB: I am sure it is, particularly in the UK. That is epitomised by the whole opt-in because the UK did not want to go ahead with that in full. And it has the ability under Lisbon to pick and choose. And in national parliaments, certainly in this country, there is considerable, suspicion is perhaps not the right word. But I think within the political culture in the UK, whatever people may say, there is an underlying feeling that really none of this has to do with the EP, and national parliaments should be aloud to get on and do it themselves. I suspect this is probably true in some other states. I do not know that. But I know the situations here. I think it is a mistake because we need to recognise that there are areas of influence that are ours and areas of influence that are legitimately those of the EP. There will be overlap and we need to build good relations. Here we have every six months a tripartite meeting with the commons, UK-MEPs and ourselves. No the whole delegation because 81 it is too many. They bring an all-party delegation. We meet them twice a year. And that is a part from the contacts that individual members may have with individual members here or the other way round during the course of the year. But yes there is a certain amount of, I am not sure what the right word is, there is reservation at the EP. And of course the EP is a new parliament. From their point of view they are new and they are gradually acquiring more power.

They want to be assertive. They would like more power. And they want to consolidate what they already have. There is inevitably going to be a tension. I do not think that is very surprising not necessarily a great problem. There is a tension, in most country, between local government and central government and in many ways is the same kind of issues.

DRG: But in a way, especially regarding the topic that we are discussing, the LIBE Committee is the role of the leader. And it is trying to organise and in a way impose what would be the outcome of this future parliamentary cooperation.

LB: Well, they may want to do that. I still take the view that it would be better to do it within the existing organisations. But if they do not do it with the existing organisations what I said to you about it being the end of the process rather than it being the whole of the process still holds true. Let's assume it did not go to COSAC and the LIBE Committee did it. Those meetings are not going to produce accountability or real scrutiny this is going to have been done either here or indeed as the LIBE Committee has done, within their committee. And indeed they will do it because I have no doubt that they will produce a report. Those meetings will be the end of the process rather than the whole process.

DRG: So in a way we will be facing a situation similar to the one we used to have. In which national parliaments will do the scrutiny of Europol alone and then they will have...

LB: No, no, no. I am not saying doing it alone. What I am just saying is that the meeting of the LIBE Committee with other parliaments will not do what is necessary on its own. That may be the forum where the head of Europol is able to come and to talk and it may be the place where he would be questioned on major issues of concern. But that meeting is not going to provide the right kind of forum for people to raise detail questions and get detail answers. It will not work that way. That work it has to be done at national parliaments and they may have to come together but the real work needs to be done back home. We are going to have to make sure that the report of Europol is scrutinised properly. We have to make sure that we get in time, in good time to frame questions and get answers, and certainly before there is any meeting of the LIBE and national parliaments committees.

DRG: This seems to be a new topic but in reality the parliamentary scrutiny of Europol is being discussed since 2001.

LB: But I have just been put in a formal basis with Lisbon.

DRG: Yes, exactly. That is my question. Between 2001 and 2009 there was the possibility to involve the EP if we talk about the Europol Convention or if we talk about the council decision to involve the National parliaments. And these ideas never happened. There was a commission recommendation in 2002. So in the space of ten years this has always been discussed and it never happened. So why should it happen now?

LB: Because the whole thing has been given impetus by Lisbon. The Commission now has picked this up. It is going to be done because of Lisbon and national parliaments as a result of Lisbon are more aware of the potential for doing something. I do not think there is another answer than that the situation has changed with the advent of Lisbon.

DRG: But national parliaments already were not doing their scrutiny.

LB: Yes but there is nothing we can do about it. We cannot make people do adequate scrutiny. If they do not want to, that is their problem.

DRG: Yes but one explanation could be that Europol before had a lot of powers but in reality it was not used. If now every one is getting hands on with parliamentary control are we expecting because now Europol is becoming a real agency.

LB: Well, you may be right. But I think there is more interest now because of Lisbon. And to be fair to the EP, they have taken the lead from the beginning they have done all these meetings and they have been very active in involving national parliaments. I do not want to be misunderstood about it. It is it is

important to be at those meetings (he refers to those of the LIBE Committee) and they are of significant contribution to relationships with national parliaments. And certainly the committee on the EU here and its chairman Lord Roper we are all very anxious to build relationships with the parliament (EP) but not just for Europol and Eurojust but also for a whole variety of reasons. The whole business of the ordinary legislative procedure, co-decision etc. All that is important and all this is welcomed. I just do not believe that a series of ad hoc meetings even if put on a regular basis of 27 member states plus the EP over the time frame in which those meetings take place can actually do the kind of the accountability that is envisaged on Lisbon. I think the work, the detail work, has to be in national parliaments. Maybe the EP has a role to pull all that together at the end, maybe they do. Or alternatively because we are talking about national parliaments maybe that is another reason for COSAC to do it. And yes it is very likely that those meetings will have to take place but this is the end of the process in my view.

DRG: You said that the EP has been very active in trying to..

LB: Yes, it seems to me, doesn't it?

DRG: Yes, I think so but why do you think the EP is interested in bring in national parliaments?

LB: Well, the Lisbon Treaty says that and I have no doubt that they feel that their committees can give a lead. And that is understandable, they are where they are, they are who they are. And they got an established committee system. So it is fair enough that they want to take a lead.

DRG: If we talk about the COM that has to put forward the regulation. It seems that the COM is talking about 2012 and some parliaments think there is no need to wait. The EP supposedly also thinks there is no need to wait. Is that also the view of the House of Lords?

LB: Yes. My view is that Lisbon having been passed, one of the reasons for some of us who supported Lisbon was the increased role of national parliaments. So it is unfortunate if this is going to slide away. I am not sure that it is terribly so complicated. I can't understand why there should be two different systems for Eurojust and Europol. What is the real significance of the wording in the Treaty? Maybe that is an accident. We are making a bureaucratic nightmare out something that ought to be relatively simple. I am sure that you or I can go away and think how are we going to solve this. And I haven't drafted a proposal but I suppose that you in the first place you say every year Europol or Eurojust will write a report within so many months and the report should contain activities, budget etc in so many weeks that will be send to national parliaments and the EP and within so many weeks parliaments submit their comments to the agencies and then once or twice there will be a joint meeting, call by COSAC call by EP whatever, of national parliament and the EP in which the major questions or concerns should be address by the agencies.

DRG: So why is the COM keen on delay? Or is it the EP?

LB: I have no idea. I just think it is becoming all so complicated. It does not seem to me that it can be so complicated. But is always easy to find a solution when is not actually your responsibility.

DRG: Is interparliamentary cooperation generally understood as a way of improving scrutiny? Or is it another task that Lisbon has given to national parliaments and it is taking time away from them?

LB: Talking about Europol it is just particularly to make these institutions having some accountability to the EP and the national parliaments.

DRG: But this use to exist before Lisbon...

LB: And that it why we should not make to much heavy weather of it. What is happening it happened to a degree, depending on the enthusiasm of national parliaments. It happened in the past to a certain extent. But it has to be put now in formal basis. And that is a good think. And I do not think we should make how we do it too complicated.

DRG: Is it the Committee that will effectively deal with the scrutiny the committee?

LB: Well, if get any form of forum... the European Scrutiny Select Committee presumably do something that will then be passed to the justice and institutions subcommittee. We have two, so it will be either passed to justice and institutions or to home affairs. One or the other it depends.

DRG: But these are both subcommittees of the European Scrutiny Select Committee aren't they?

LB: Yes they are.

DRG: During the time when the Council Decision on Europol was discussed in the Council, at the very beginning of the negotiation there was a proposal on the creation of a joint supervisory committee by national parliaments and the EP. This was part of the conclusions of a Council meeting. But then it was not mentioned anymore and it was not part of the Draft Council Decision. However, the House of Lords picked up the issue and they said that they were sorry that this was not in proposal and asked the government to press for the issue.

LB: When was this?

DRG: 2006. So there was an interest from the part of the committee to have this Committee established. So why is it not this change in the policy preference?

LB: I do not know. I was not involved in 2006. I think time does move on. What we are talking about is parliamentary scrutiny as envisaged by Lisbon. I just need to look back to 2006. So it may be that at time Europol was seen as freestanding organisation that would be run by the board. I really do not know. My point is that we are not talking about a supervisory board under Lisbon. And there is no provision in Lisbon for it. And you may need treaty changes and all that for this. And this is out of the question. So here we are just talking about how and what we will do to meet the requirements of Lisbon. And you have to keep relatively simple. And boards with one member of every member state make things rather complicated and heavy.

DRG: Yes and sometimes it does not really work. You create all these institutions and they do not work.

LB: Precisely. Whatever the reasons were in 2006 I am not convinced now. And certainly that is not needed to fulfil the limited requirements of Lisbon.

DRG: Yes but the objective is always the same. Is to provide for parliamentary scrutiny.

LB: But not control

DRG: But is still seen that Europol requires some sort of scrutiny from national parliaments?

LB: Yes. It needs scrutiny by somebody and Lisbon has said that it will include national parliaments so it has to find a way of doing it but as effective as possible and as efficient as possible.

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Ms. Sophia In 't Veld, MEP
Vice-Chair of the LIBE Committee

Date and place of interview: 19 October 2010 [SKYPE]

Daniel Ruiz de Garibay: Thank you for accepting being interviewed Ms. In 't Veld. Now, I study parliamentary cooperation and I focus particularly in the parliamentary control of Europol. My main

interest is to research what are MEPs doing in order to involve national parliaments in the discussions that are taking now especially at the level of the LIBE Committee.

Sophia In 't Veld: Are you specifically focus on Europol?

DRG: Yes

DRG: Is there any specific activity that you do to try to involve the Senate and the House of Representatives of the Netherlands? Do you report back on the activities that are done at the LIBE Committee for instance?

SIV: There are of course special channels. There is a representative of the national parliament in Brussels. But of course most of our contacts are via party political line. I work together with my party colleagues in the national parliament.

DRG: Are there only informal channels of communication?

SIV: Daily but they do not work very well because there is an special division of powers. For some things the EP is officially responsible but for some other the national parliaments are in charge. What we do is we try to tackle the same subject at the same time both at the EP and in the national parliament. For example if I table a parliamentary question on a particular topic then I ask my colleagues in the national parliament to put in the same question or a similar question at the same moment. And then we see the answer that we get. Or when the national parliament has to debate about a European topic. I will provide input. And the same when we are having a debate I ask them for input on the national situation. We also do that with parliaments of other member states not only my own national parliament.

DRG: That is very interesting. As you know with the Lisbon Treaty national parliamentary will be involved on the parliamentary control of Europol and in the control of Eurojust. And this is something that has been discussed. There was a meeting at the LIBE Committee two weeks on this topic. Is there any special interest in national parliaments to be involved in this sort of issues?

SIV: National parliaments are busy with national issues. And they consider European issues as added to their normal work. And they do not consider it their work. Only few national politicians are interested.

DRG: Can we say that in this sense national parliaments are just happy that the EP is taking the lead on this?

SIV: That I would not say. I do not think they are every happy when we are taking the lead because they feel some rivalry.

DRG: Yes but at the same time the Treaty allows them to be involved and as you are saying they are not really involved because they are not following the issues.

SIV: No but we cannot force them. The instruments created by the Treaty are not going to be very useful. Because for that parliaments will have to coordinate their activities and I do not think that is going to work. Second, the instruments are designed to block the legislative process. They are instruments that allow national parliaments to have a bigger input. National parliaments are not involved in the shaping of politics. It would have been more useful if they could have been more involved. But I do not think we should make a dogma out of involving national parliaments. They have the right to do so and even before Lisbon they had plenty of opportunities. If they do not use them, they do not use them you know?

DRG: This is true. But I suppose that in some cases is also interesting for members of the EP to get the perspective of national parliaments.

SIV: Yes this is true. And when we want to know we ask them. And if national parliaments want have their input they can do so. But is like with voters if people do not want to use their democratic right to vote you cannot force them. The only thing is that people who do not want to be involved in the democratic process should not complain afterwards if they do not like the result.

DRG: Do you think Interparliamentary Committee Meetings do not work particularly well?

SIV: No. They do not work. National parliaments sometimes do now show up because they have other things to do. They key MPs do not show either. And it is more an exchange of statements. But you have to realise that to work with somebody you have to know people. You do not sit down with a total stranger in a room to take decisions. That does not really work.

DRG: So then what works best is working at the level of political parties?

SIV: I cannot say it for the specific question but on other issues yes, that is the channel. Because there people know each other, they are politically likeminded, they share the same goals, they have short communication. Yes is the best channel.

DRG: So it is there an issue of trust involved?

SIV: Yes, of course.

DRG: In this sense if we could advance in the creation of European Parities. We would be in a position of dealing with these issues much better.

SIV: Yeah I think so. I am not really sure how can they be developed. Because we have been trying for the last 30 years. As I said my more natural allies in this context are my party friends in the Netherlands but I would also seek the support of liberal parliamentarians in other national parliaments. That is not done very often but we do it more and more. I am doing it know for an issue I am rapporteur on.

DRG: Talking in general about parliamentary control in JHA, do you see there any role for national parliaments? Are they playing any role?

SIV: They control their ministers and they still have some formal powers. But other than that is mainly cooperation along political lines. Formal powers are clear. In the informal is mainly cooperation between party colleagues.

DRG: I understand and if it is like that it is like that. But in JHA deals with issues that affects both the national and the European level. And affects citizens directly. So it is understandable that parliaments will have an interest in having an active role.

SIV: Apparently that is not the case because we are not able to mobilise them over ten years or so. At the very end of the process they wake up. Then they are of any influence anymore. They can only block the whole process they cannot change anything. Now it is clear that the powers lay with the EP and I think we should gradually abandon this myth that EP is not in touch with the people. I am very much in touch with people. In some case I would say more that MPs. There is not reason why EP could not represent citizens and understands what worries them. And of course we informally work together with MPs because together we are what I would call the parliamentary dimension of European integration. And this does not mean that there is not a formal role for them (national parliaments) any more.

DRG: You mentioned that EP is been trying to engage national parliaments. Has that been the case of the LIBE Committee? Has it been proactive trying to engage national parliaments?

SIV: Yes in different ways. Clearly the more formal way has been by organising those meetings that do not work. But the party political context does work. They work very well.

DRG: Why do you think Interparliamentary Committee Meetings do not work?

SIV: Because MPs do not show up. MPs consider that Europe is extra. They do not consider it part of their normal job. If they have a meeting at home they are not going to skip the meeting in order to go to Brussels. They are many chambers and if we schedule a meeting in Brussels it will clash with some meeting at home. For them is just not on the mainstream.

DRG: Would you say that national parliaments do not understand interparliamentary cooperation as a potential tool to increase their parliamentary control over EU issues?

SIV: That may be a conclusion yes.

DRG: I just would like to come back to this idea that the EP sometimes lacks legitimacy; contact with the people and that it needs this input of national parliaments.

SIV: I think we should not perpetuate this myth. Times are changing the EP is much more visible that is used to be. It is much closer to people. It generates a lot more interest. So I do not think the European Union can be done via the national level.

DRG: This is true that EP is doing that. But the Treaty gives much more powers to national parliaments. So the Treaty is going in another direction?

SIV: No. The instruments that were created are mainly negative and they are not going to be of more influence for national parliaments. I guarantee you that.

DRG: So there will be some instruments that we have in the Treaty because of the convention but there will be of no use?

SIV: Yes. It was meant to satisfy the Euro sceptics and that Europe was not down to be a super-state. But it is all rubbish. The EP has been extremely active and immediately after the entry into force of the Lisbon Treaty took of its role. So there is no gap for the national parliaments to feel. Why are we always so obsessive about this? The national governments are controlled by national parliaments; national governments are not controlled by the collective municipal councils. So if politics are European in other words if there is European governance the democratic control should also at that level because it is simply the most effective, and the most transparent. And that is what will become very clear. And all these other instruments of what is it orange cards or yellow cards, emergency brake that is all rubbish. It is not going to work.

DRG: Yes I agree. But in the case of JHA national parliaments share some competences.

SIV: What exactly is your question? We can debate this for long time. But what are you looking for?

DRG: I am just curious that the LIBE Committee has been organised these joint parliamentary committees for long. It is one of the committees that has organised the most of those meetings. And however...

SIV: But have you attended one of those meetings?

DRG: Yes I have.

SIV: Ok, was there any body there?

DRG: And they are not very useful. So I am just curious why are they organised?

SIV: Well I do not know. I suppose because people are still afraid that is the EP claiming its own powers to visibly and that people will say that we are trying to create a European super-state. It is basically... and also because we genuinely believe that cooperation with national parliaments is an important thing, and it is. It is just these Joint Parliamentary Meetings are not a very useful instrument.

DRG: I think I covered most of the topics I wanted to discuss. Thank you. Thank you very much for your time.

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Mr. Agustín Díaz de Mera, MEP

Member of the LIBE Committee, Rapporteur of the Council Decision on Europol

Date and place of interview: 8 November 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Estudio la relación del Parlamento Europeo con los parlamentos nacionales. Cual es la cooperación parlamentaria que se está llevando acabo entre el Parlamento Europeo y los parlamentos nacionales en el tema del control parlamentario en el Espacio de Libertad, Seguridad y Justicia. El tratado propone bastantes posibilidades para la cooperación pero yo no se si está desarrollando mucho esta cooperación.

Agustín Díaz de Mera: Bueno el Tratado es un niño recién nacido por tanto está en fase de desarrollo. No obstante existe colaboración entre el Parlamento Europeo y los parlamentos nacionales y existía con anterioridad a lo establecido en el tratado. Yo creo que lo que procederá será ir realizando informes que puedan ir desarrollando la tarea legislativa en lo que concierne a los métodos y a los tiempos. Para producir esa colaboración interparlamentaria en base a controlar a otras instituciones de la Unión.

DRG: Acaba de decir que ya existía la cooperación incluso antes del Tratado de Lisboa ¿en qué consistía esta cooperación? ¿Comisiones conjuntas...?

ADM: No no no. Fundamentalmente en debatir, es el verbo. Con independencia de que no tuviese una vinculación jurídica el debate. Pero si en la fase de audiencia para poder fijar una posición con referencia a determinados temas. Fundamentalmente en el ámbito en el que yo trabajo.

DRG: ¿En este sentido los parlamentos nacionales serían más bien unos aliados del Parlamento Europeo frente al consejo?

ADM: No, se trata tanto de una alianza. Lo que yo he propuesto verbalmente en la última sesión que tuvimos referida al control parlamentario del Espacio de Libertad, Seguridad y Justicia fundamentalmente en las agencias, es que se trabajase a escala de comisión. Por ejemplo, la comisión LIBE por parte del Parlamento Europeo y las comisiones concernidas por parte de los parlamentos nacionales. No sería necesario trabajar en pleno. Sería útil por ejemplo trabajar a escala de portavoces. No es lo mismo desplazar desde los 27 Estados Miembros a Bruselas a 40 o 50 personas multiplicado por 27 que desplazar a 27 portavoces. Eso facilitaría creo yo las posibilidades de un trabajo eficaz. La sede naturalmente por economía de procedimiento y también por economía strictu sensu debería ser Bruselas, el parlamento Europeo. Aquí es donde deberían desplazarse los representantes de los parlamentos nacionales en la materia que nos ocupa. Y otra cuestión sería determinar qué es lo que controlamos. Por ejemplo imaginemos que controlamos Europol. Habría que establecer el procedimiento legislativo para controlar Europol. Por ejemplo, esta comisión mixta entre el Parlamento Europeo y los parlamentos nacionales funcionaría tres veces al año. Una para evaluar el presupuesto y el programa de actividades, otra vez para evaluar la ejecución del presupuesto y evaluar la ejecución del plan de actividades. Pero además tendríamos que tener la posibilidad de establecer mecanismos de control o de información cada vez que ocurriera un acontecimiento extraordinario y cada vez que el director de Europol, e petición propia, reclamara una sesión conjunta entre el Parlamento Europeo y los parlamentos nacionales. Ese sería un ejemplo que podría dar cobertura por analogía al control parlamentario del resto de las agencias, Frontex, Eurojust. Esta tarea no está desarrollada. Esta tarea legislativa hay que desarrollarla.

DRG: El Parlamento Europeo en la resolución del 25 de Nov de 2009 pide la creación de un foro conjunto en este sentido. Pero los parlamentos nacionales no se han movido, no se han posicionado.

ADM: Bueno no se puede decir de una manera tan categórica no? En puridad los parlamentos nacionales cada vez que son convocados envían a un representante. Lo que no puedo afirmar es que todos los países

envíen a representantes parlamentarios. Pero en el momento en que tuviésemos una base legislativa entonces sí que el procedimiento sería mucho más riguroso.

DRG: Este procedimiento sería la regulación

ADM: Naturalmente. Sería el desarrollo del tratado de Lisboa para todo aquello que concierne al control parlamentario que deriva de la conjunción del Parlamento Europeo y los parlamentos nacionales.

DRG: Sería una regulación Parlamento Europeo / Consejo al menos en el caso de Europol?

ADM: No he entendido bien lo que quieres decir

DRG: En el caso de Europol, el control parlamentario de Europol todavía está sin desarrollar y será una norma que realice el Parlamento Europeo con el consejo.

ADM: Naturalmente, en co-legislación.

DRG: Y parece ser que estamos hablando que la Comisión podría lanzar la propuesta incluso en 2013.

ADM: Bueno, podría lanzarla en ese horizonte temporal o podría lanzarla antes o después. Esta no es una cuestión que podamos aquí y ahora determinar el cuando. Lo que sí que sería necesario es el impulso del Parlamento Europeo para que fuera cuanto antes.

DRG: Lo que es interesante saber es ¿cual es voluntad política por parte del Parlamento Europeo?

ADM: Es muy fuerte. Hay una inequívoca voluntad política por que el control parlamentario tenga la dimensión que deriva de la capacidades y competencia del Parlamento Europeo y la que deriva de las capacidades y competencias de los parlamentos nacionales.

DRG: En este sentido ¿cual sería la ventaja que el Parlamento Europeo podría obtener en involucrar a los parlamentos nacionales?

ADM: Pues no se trata de ventaja. Se trata simplemente de que el mayor déficit que tiene la Unión Europea es la dificultad que hasta ahora tenido para llegar a los ciudadanos. Y la mejor forma para llegar a los ciudadanos es involucrando a sus representantes nacionales. A parte de que la calidad democrática de la Unión mejoraría muchísimo si están involucrados en los padecimientos de control los parlamentos nacionales y el Parlamento Europeo.

DRG: El control parlamentario de Europol y su mejora, lleva discutiéndose años.

ADM: Sí pero es que Lisboa tiene un año. Es decir que lo que sí que podemos afirmar es que ese control es una pretensión con permanencia en el tiempo por parte del Parlamento Europeo. Por analogía con lo que sucede en los parlamentos nacionales. Los parlamentos nacionales controlan a sus instituciones policiales. Y el Parlamento Europeo con los parlamentos nacionales tienen que controlar desde el punto de vista parlamentario y democrático a las agencias que están en ámbito de la SLJ.

DRG: En el caso de Europol, con la antigua base jurídica de Europol, con la Convención, el Parlamento Europeo era prácticamente inexistente.

ADM: Y además la mayoría de las propuestas que hizo el Parlamento Europeo cuando se hizo la decisión no fueron tenidas en cuenta. Y no lo fue a pesar de tener un amplísimo respaldo por parte de la cámara. Es decir el Parlamento Europeo con la decisión fue en una dirección y el consejo en otra.

DRG: Entonces en qué puede quedar esta cooperación con los parlamentos nacionales cuando en cierto modo los parlamentos nacionales son agentes de propio gobierno que es el que sienta en el consejo.

ADM: No no. Pero es que el Parlamento Europeo tiene, como es obvio, naturaleza jurídica per se. Lo que ocurre es que cuando se trata de controlar a una agencia de seguridad es muy necesario el control de los

parlamentos nacionales. A mi juicio eso da vitalidad, dará vitalidad y dará carta de naturaleza, y dará fundamentalmente confianza a Europol en los estados miembros y dará la posibilidad de que los ciudadanos vean en Europol un instrumento de seguridad Europeo de colaboración con los instrumentos pre-existentes en los diferentes estados miembros.

DRG: Pero con la Convención los parlamentos nacionales no es que hiciesen demasiado. El control parlamentario de Europol era reducido.

ADM: No, los parlamentos nacionales no podían controlar Europol, podrían controlar a sus jefes de policía. Al suyo. Podrían pedir la comparecencia del jefe de la unidad de Europol en el estado miembro. Y entonces el ministerio del interior del país podría decir si compadece o no al director de la policía, el director de la unidad nacional o el propio ministro. Es decir que un control strictu sensu de Europol en función de lo establecido en la Convención no era viable. Por que cualquier ministro del interior podría asumir la tarea de ser controlado en lugar de que fuese controlado una unidad de Europol en un estado miembro.

DRG: ¿Existía algún tipo de cooperación con el Parlamento Europeo aunque fuese ad hoc?

ADM: Te estoy diciendo que sí. Exclusivamente para la información. Información presupuestaria e información de actividades de Europol. Sin que eso supusiera un procedimiento de control. Era un procedimiento de información.

DRG: ¿Y qué es lo que ha sucedido entre 2002-2009, a parte del Tratado de Lisboa para que ahora exista la posibilidad de que se desarrolle de verdad la cooperación entre el Parlamento Europeo y los parlamentos nacionales.

ADM: Pero eso trasciende al ámbito que estamos comentando. Lo que en puridad hay después del Tratado de Lisboa es un parlamento que legisla más junto con el consejo. Se ha mejorado notablemente la calidad democrática porque el Parlamento Europeo tiene un papel más legislador y menos como un instrumento de opinión. El Parlamento Europeo con nuevas capacidades legislativas, sobre todo en el Espacio de Libertad, Seguridad y Justicia lo que quiere es establecer procedimientos de control junto con los parlamentos nacionales para las agencias que trabajan en ese ámbito.

DRG: Pero esto explicaría porque el Parlamento Europeo tendría una mayor capacidad de control pero no una voluntad de cooperar con los parlamentos nacionales.

ADM: ¿Pero como se mide la voluntad política de un Parlamento? Cómo no sea a través de instrumentos sociológicos de medición de opinión.. Pero si yo digo que el Parlamento Europeo tiene voluntad política de producir control democrático a estas agencias no me lo estoy inventando, es que lo veo. Es que lo noto, es que lo detecto.

DRG: Igual me he expresado mal. Lo que yo quiero decir es que está claro que el Parlamento Europeo esta intentando realizar una mayor labor de control, ¿pero en qué modo esta intentando involucrar a los parlamentos nacionales?

ADM: Pues te he contado antes lo que hay en términos de pretensión pero he dicho también antes que estamos pendientes de desarrollos legislativos y la iniciativa parte de la comisión.

DRG: Yo he estado hablando con representantes de parlamentos nacionales y he notado una cierta ambivalencia con respecto a lo que sería la función del Parlamento Europeo. Por ejemplo en el caso concreto de la Comisión LIBE algunos representantes de parlamentos nacionales comentan que el foro para discutir esas cuestiones, respecto la función de los parlamentos nacionales en el control parlamentario en el Espacio de Libertad, Seguridad y Justicia podría ser la COSAC y no LIBE.

ADM: Bueno pues eso es un punto de vista bastante alejado de la realidad porque quien tiene conocimientos y competencia es la comisión concernida.

DRG: ¿La Comisión LIBE debería ser un líder?

ADM: Naturalmente.

DRG: ¿Su opinión es que los parlamentos nacionales aceptan ese rol?

ADM: He dicho que esta a parte de ser una cuestión de desarrollo legislativo. Si finalmente concluimos en una ley, sea una regulación o una directiva, pues lo parlamentos nacionales como es natural tendrán que transponerla a su legislación y son normas de obligado independientemente de que usted haya identificado una posición de favor o rechazo por parte de los parlamentos nacionales. Que yo creo que los parlamentos nacionales están a favor de este desarrollo legislativo y de trabajar juntos con el Parlamento Europeo. Lo percibo.

DRG: Hace un mes hubo una reunión conjunta entre los parlamentos nacionales y LIBE se discutió el control parlamentario de Europol y usted se mostró abierto a recibir propuestas de los parlamentos nacionales. ¿Están siendo éstos preactivos?

ADM: No tengo ni la menor idea porque yo no soy el que canaliza estas propuestas. Esas propuestas las canaliza en todo caso el presidente de la comisión LIBE o los servicios jurídicos de la comisión LIBE pero no me van a enviar a mí los parlamentos nacionales esas propuestas. Porque no tengo ni autoridad ni legitimidad para ser receptor de esas propuestas. Esas propuestas se hacen al Parlamento Europeo a través de su presidente o del presidente de la comisión.

DRG: ¿No hay una relación más bien informal entre lo que sería el relator y aquellos parlamentos nacionales que están interesados?

ADM: Es que en puridad ahora mismo no hay un relator Europol. Yo soy el relator Europol para la decisión del consejo. Lo que ha habido es un rechazo de relatores a los diferentes desarrollos de lo que ha sido la decisión del consejo. ¿Por qué? Pues porque nosotros dijimos que queríamos un Europol bajo el Tratado de Lisboa no antes del Tratado de Lisboa, eh? Entonces la nueva Europol que será un reglamento que tiene un horizonte temporal del 2013 podrá tenerme a mi como relator o no. Está por decidir porque ni siquiera hay una propuesta legislativa y lo que nosotros queremos es que cuanto antes no en 2013 sino si es posible en 2011 haya ya un debate sustantivo. En cualquier caso la Comisión está ya haciendo algo muy inteligente la comisión ya está hablando con el Parlamento Europeo y con los parlamentos nacionales para decir que Europol quieren ustedes. Es decir ya estamos hablando sobre la nueva Europol. Que a mi me parece una actitud pues muy loable y muy inteligente por parte de la Comisión.

DRG: Pero en realidad la decisión de Europol ya está cerrada...

ADM: Está cerrada hasta que la sustituya el reglamento que tendrá que ser en 2013 como muy tarde. Ahora mismo la decisión del consejo es el marco jurídico de Europol pero es que la decisión del consejo va a ser modificada por un reglamento. Es decir, va a haber un reglamento que va a ser el marco jurídico de Europol. En función de lo establecido en el programa Estocolmo y en su plan de acción. Es decir, Europol va a tener un marco jurídico nuevo que va a ser un reglamento. No va a ser una decisión del Consejo, va a ser un reglamento. ¿Está claro eso? Ahora mismo la decisión el consejo tiene efectos vinculantes para Europol pero lo que digo es que en función de lo establecido en el tratado de Lisboa y en el programa de Estocolmo. Europol va a tener una nueva naturaleza jurídica que va a ser un reglamento y eso tiene un horizonte temporal del 2013. Pero nosotros queremos que sea antes, mucho antes.

DRG: ¿Pero la Comisión no tiene ninguna prisa?

ADM: Si mucha. Porque está impulsando ese tipo de reuniones. Yo ya me he reunido con la Comisión en el mes de julio y en septiembre o en octubre. No yo, nos hemos reunido con la Comisión y con representantes nacionales y con representantes de la oficina Europol y con el director de Europol y con el director general concernido. No, no la comisión está impulsando eso.

DRG: En cuanto lo que podría ser la distribución de información entre Parlamento Europeo y parlamentos nacionales. Existe por ejemplo IPEX. Pero algunas de las opiniones que yo he recibido sobre IPEX es que en realidad no funciona muy bien. ¿Hoy por hoy IPEX se utiliza, no se utiliza?

ADM: Que quieres que te diga, porque todo es mejorable.

DRG: ¿Sería deseable tener dentro de IPEX una parte solo para ALSJ?

ADM: Pues vuelvo al origen, yo creo que todo es pura especulación. Lo que hay que hacer es tarea de desarrollo legislativo y tenemos que hacer tarea de desarrollo legislativo de del control parlamentario. No está hecha, hay que hacerla. Y se va hacer bajo el impulso del Parlamento Europeo y de la Comisión que ya hace un mes ha preparado un *hearing* para que el Parlamento Europeo y los parlamentos nacionales se empiecen a expresar sobre esa posibilidad jurídica. Es tipo de relaciones no se construye de la noche a la mañana. Tiene una gran complejidad. Y no vale que yo improvise aquí un discurso. Lo que hay que hacer es desarrollar la ley pero mientras tanto lo que hablemos es especular.

DRG: ¿Y hablamos del pasado cuales han sido en este ámbito las experiencias de cooperación?

ADM: Informativas o de debate. En lo que interesa como puede ser el Swift, el PNR. Otro que interesa como puede ser Frontex. Y cada vez más hay Hearings con parlamentos nacionales para tratar sobre determinadas cuestiones. Pero está pendiente de establecer una norma que sea capaz de establecer con precisión cómo se produce el control parlamentario a las agencia en el ámbito LIBE a través de la comunión del Parlamento Europeo y de los parlamentos nacionales.

DRG: ¿Y estas comisiones conjuntas que se han ido realizando serían en cierta manera un proyecto piloto?

ADM: Yo creo que en cierta manera es el principio del camino. Lo que ocurre es que hay que definir cuantas personas de ese ámbito de competencia deben participar en esas comisiones mixtas. Por eso hay que legislarlo. Yo he dicho mi opinión pero no es la única.

DRG: ¿Su opinión es que sería deseable foros más pequeños?

ADM: Claro, por eso he hablado de portavoces de las comisiones. Portavoces del LIBE y de las comisiones de justicia de los parlamentos nacionales. Es muy sencillo, en los parlamentos nacionales, en las comisiones de justicia hay portavoces de los distintos grupos. Pues esos señores se desplazan a Bruselas para controlar a tal o cual agencia. Otra posibilidad en lugar de que el control lo produzcan los portavoces, eventualmente, según la naturaleza del evento a controlar, podrían producirlo los ponentes que son los que están más próximos al asuntos.

DRG: Pero estamos viendo que algunos parlamentos nacionales han pedido al director de Europol que se presente en sus cámaras.

ADM: Eso es totalmente legal y legítimo. Pero no para ser controlado. Para informar. Es que un parlamento nacional no puede tener control sobre una institución comunitaria. Puede sin embargo llamarlo para recibir o recabar información. Eso sin ninguna duda. Pero como usted sabrá, otra cosa que fue objeto de debate en la última reunión conjunta de LIBE es, ¿qué se entiende por control? Controlar no es solamente informar. Controlar es asumir responsabilidades y dar cuenta al parlamento o a los parlamentos de esas responsabilidades. Por ejemplo controlar tiene que ser una cuestión definida por ejemplo con el control que producen los parlamento nacionales. ¿Controlar, nombrar al director de Europol? Pues no. Es una competencia pero no de control. Lo que si que sería una competencia de control sería poder cesar. Estas cuestiones tienen que ser precisadas y matizadas y no están ni precisadas ni matizadas.

DRG: Cuando se creó la Decisión del Consejo, al principio, en algunas de las discusiones se mencionó la posibilidad de crear un órgano de control conjunto entre los parlamentos nacionales y el Parlamento Europeo. Se mencionó una vez en las conclusiones del consejo y en su informe, pero al final quedó fuera. Es decir este un tema que es recurrente.

ADM: Pero es recurrente porque en puridad el consejo es un instrumento complicado para la adopción de decisiones. Y estamos hablando de la cuestión de la seguridad y la cuestión de la seguridad siempre tiene

que ser controlada, pero siempre los gobiernos tratan de eludir parcelas de ese control. Lo deseable es que esas opacidades sean mínimas o inexistentes y que cuando se indiquen la seguridad del Estado o la seguridad de los Estados para no someterse a sesiones de control. Esas sesiones de control se sigan produciendo pero ante células de control muy reducidas y además secretas. Comisiones secretas de control existen en los parlamentos nacionales. Pues según la naturaleza de la cuestión que deba ser objeto de control, la legislación comunitaria por elaborar debería decir cuales son esas áreas de control muy reducido y secreto pero siempre parlamentario.

DRG: ¿cuál sería la explicación para que este órgano de control que se propuso al principio de la decisión del consejo no apareciese en la decisión y ahora parece que se va a desarrollar?

ADM: Pues es que va entrar. No va a haber más remedio. Europol si quiere tener legitimidad plena y confianza plena tiene que ser susceptible de ser controlado. Y va a ser controlado porque es la voluntad inequívoca de la Comisión, del Consejo y del Parlamento Europeo.

DRG: Cree que esto puede ayudar a que Europol sea más utilizado por los Estados. Porque parece ser que hasta hace unos años Europol tenía su base de datos...

ADM: Yo tengo mucha confianza en las capacidades potenciales de Europol. Yo creo que Europol es un instrumento que ya cumple una misión de eficacia alta. Y todavía tiene que complicar una mayor función en el ámbito común. ¿Y como se consigue eso? Pues a través de varios procedimientos de los cuales estamos hartos de hablar. Eso se consigue en clave de confianza. La confianza se genera con profesionales que saben de lo mismos, es decir con especialistas. Y la confianza se genera a través de un control democrático de eso.

DRG: ¿Esta necesidad de regular el control de Europol viene del hecho de que Europol se está desarrollando más y más?

ADM: Ahora mismo Europol tiene competencias exclusivas en la lucha contra la falsificación del Euro. Europol es muy bueno en la lucha contra la pedofilia, contra el cyber-crimen y en la localización de vehículos sustraídos y desaparecidos. Es muy bueno en la lucha contra el tráfico de estupefacientes. Hay unos ámbitos en los que Europol es bueno y hay un ámbito en el que Europol es único, la lucha contra la falsificación del Euro. Pero es que no podemos pretender que Europol sea más de lo que son las instituciones comunitarias. ¿Sabes el nivel de la participación de los ciudadanos en las elecciones al Parlamento Europeo? Pues es bajísimo y eso tiene que ver con la lejanía, intelectual social y política de los ciudadanos de la Unión Europea en referencia a las instituciones de la Unión Europea. Con lo cual si esa lejanía es un déficit a corregir como vamos a pretender que eso que es un fenómeno generalista sea diferente en una agencia como es Europol. Lo que hay que hacer es generar confianza entre los profesionales en función de la especialización y crear un verdadero y profundo control democrático. Delimitando bien las parcelas que son susceptibles de ser más controladas y las que son susceptibles de ser controladas no menos sino por menos. Pero en cualquier caso controladas.

DRG: Pero estas funciones las puede hacer el Parlamento Europeo solo.

ADM: El europeo y los nacionales. Yo lo que digo es que la célula parlamentaria de control en algunas cuestiones tiene que ser reducida. Con la comisión especializada de coordinación.

DRG: ¿Existen posiciones contrarias a la reducción de estas comisiones. Es decir el control por menos?

ADM: Todavía no es un asunto debatido. Estamos empezando en eso debates como he dicho a instancia de la comisión. Ya ha habido una sesión monográfica sobre el control parlamentario y habrá más. Naturalmente que habrá más.

DRG: ¿Se refiere a la sesión conjunta de hace un mes?

ADM: Sí.

DRG: ¿Porqué no se tomó la decisión de hacer estas reformas cuando se hizo la Decisión de Europol?

ADM: ¿Pero no te he dicho que la posición del Parlamento Europeo fue tomada muy parcialmente en consideración? Porque esto en puridad es lo que es, una decisión del consejo, del consejo. Teniendo muy poquito en cuenta la opinión del Parlamento Europeo. Por eso nosotros queríamos y queremos un Europol bajo Lisboa y la decisión del Consejo fue artificialmente aprobada días antes de que entrara en vigor el Tratado de Lisboa.

DRG: ¿Con el objetivo de..?

ADM: Yo no juzgo intenciones. Yo lo que digo es que nosotros queremos una Europol, fuerte, eficaz y democrática y la en construcción de esa Europol tiene que intervenir el Parlamento Europeo y eso se va hacer con el reglamento.

DRG: ¿Y de aquí a que se apruebe el reglamento?

ADM: La decisión del Consejo.

DRG: ¿Pero podemos esperar una relación fluida parlamentos nacionales Parlamento Europeo?

ADM: Yo lo deseo, claro que sí. Bastante más fluida.

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Mr. Juan Fernando López Aguilar, MEP
Chair of the LIBE Committee of the European Parliament

Date and place of interview: 9 November 2010, European Parliament, Brussels

Daniel Ruiz de Garibay: Estudio el control parlamentario del Espacio de Libertad, Seguridad y Justicia y en concreto estoy interesado en la cooperación interparlamentaria orientada a ese fin. Es decir, las relaciones entre el Parlamento Europeo y los parlamentos nacionales a fin de mejorar el control parlamentario en este área. Entonces visto que usted es el presidente de la comisión LIBE me interesaría saber cual es su opinión sobre cómo se está desarrollando esta cooperación, cual ha sido su evolución, a que punto estamos, cuales han sido las dificultades.

Juan Fernando López Aguilar: Para empezar mencionar que mi mandato como miembro del Parlamento Europeo por primera vez fue en Junio de 2010. Mi mandato coincide con la entrada en vigor del tratado de Lisboa que significa una situación nueva. Y un relanzamiento de la capacidad del Parlamento Europeo de incidir y decidir en la política europea. Mi experiencia está acotada a esta fase de entrada en vigor del Tratado de Lisboa que significa un relanzamiento muy potente de la parlamentarización de la política europea. Con la entrada en vigor del Tratado de Lisboa hay todo un nuevo dominio competencial y el parlamento refuerza sus competencias en la codecisión. Es que el Tratado de Lisboa incorpora una complicación a esta dimensión parlamentaria de la Unión Europea al nombrar un trabajo conjunto entre los parlamentos nacionales y el Parlamento Europeo. Hay todo un conjunto de técnicas que están descritas en los artículos de referencia. (Artículos 67-89). Y hay algunos de estos artículos que ordenan formas de colaboración específica parlamentos nacionales Parlamento Europeo. Esto complica el manejo del la dimensión parlamentaria. El tratado de Lisboa significa una refundición de reglas de juego de gran calado. Para la ciudadanía y para la articulación de los intereses nacionales en el marco europeo. Un problema fundamental es que esta dimensión parlamentaria no ha sido percibida ni explicada, y esto afecta a los parlamentos nacionales que ignoran hasta que punto van a tenerse que comprometerse más con la construcción Europea en el ámbito del Espacio de Libertad, Seguridad y Justicia. Hemos tenido al menos dos comisiones interparlamentarias en las que hemos

constatado que los parlamentarios nacionales, los parlamentarios presentes, no han acabado de enterarse. No se han dado cuenta, no son conscientes.

DRG: ¿Puede ser una razón que la mayoría de los MPs que asisten a estos encuentros son miembros de EAC y no de comisiones de Justicia?

JFLA: Así es. Además acudir al parlamento Europeo para una reunión interparlamentaria es visto como una labor secundaria, no central ni troncal. Es la falta de consolidación de estas experiencias. Por ejemplo toda esta práctica aún es embrionaria. De modo que no es fácil llenar de contenido preciso de cada convocatoria. Se sabe que el objeto de cada convocatoria es específico. Pero lo normal es que cada convocatoria derive a consideraciones de carácter más general. Entonces señalo dos ejemplos Artículo 70 y 71. Evaluación del Espacio de Libertad, Seguridad y Justicia. Artículo 71 habla del comité de seguridad interior. Mantener informados al Parlamento Europeo y a los parlamentos nacionales. Estas son algunas de las cláusulas de cooperación. Y no son las únicas también las hay en materia judicial civil existe el mecanismo de alerta naranja, en relación con el derecho de familia. Como ves hay varias referencias. Lo mismo sucede con la agencias Artículo 85. Eurojust. Y lo mismo en el Artículo 88. Entonces como ves el cuadro relativo a la cooperación está ya clavado en Lisboa pero ahora debe ensayarse. Y lo que percibimos es que va a tardar tiempo. Porque los parlamentos nacionales tardan en comprender la importancia de su implicación en la cooperación con el Parlamento Europeo a la hora de llenar de contenido el ALSJ.

DRG: Por ejemplo el Parlamento Europeo el 25 de Noviembre de 2009 en una resolución cita todos estos artículos y luego sugiere la creación de un foro permanente a nivel político con los parlamentos nacionales. Pero parece ser que lo parlamentos nacionales no se han posicionado. Es decir estamos en una situación en la que el Parlamento Europeo se erige como el líder de la cooperación interparlamentaria con los parlamentos nacionales cuando los parlamentos nacionales parece que no están por la labor.

JFLA: Es como si los parlamentos nacionales no hubieran acusado el recibo de la importancia del cambio de reglas de juego. Sobre todo de la materia implicada. Los parlamentos nacionales como la política nacional, a pesar de que Europa va llenándose de contenido, a pesar de que Europa va expandiéndose, siguen sintiéndose el centro. Continúan discutiendo y deliberando como si Europa no les afectase. Los parlamentos nacionales no se han enterado de hasta que punto están obligados a colaborar con el Parlamento Europeo si quieren llenar de contenido...

DRG: La comisión LIBE es la que ha mayor numero de encuentros con los parlamentos nacionales ha realizado. Y entre sus miembros parece que existe la idea de que la cooperación interparlamentaria es positiva.

JFLA: En la Comisión LIBE hay una alta conciencia de ésta dimensión parlamentaria. Y yo diría que la conciencia de la comisión LIBE es superior a la conciencia de cualquier comisión del Parlamento Europeo. Precisamente por la dimensión cualitativa del objeto del Espacio de Libertad, Seguridad y Justicia. Se percibe tan claro que antes era un objeto que estaba fuera de la agenda europea y ahora es central en la agenda europea que en la comisión LIBE todo el mundo está en esa conciencia muy activa. Y la agenda de la comisión LIBE está muy saturada, es muy intensa. La capacidad del Parlamento Europeo de gestión de iniciativas para conseguir alcanzar temas a la ciudadanía y a los parlamentos nacionales.

DRG: ¿Es decir, el interés de la comisión LIBE por involucrar a los parlamentos nacionales tiene que ver con el interés del Parlamento Europeo de llegar a la ciudadanía?

JFLA: No estoy hablando del Parlamento Europeo con carácter general. Estoy hablando de la actitud del LIBE. La actitud de LIBE con respecto a los parlamentos nacionales es una actitud que no tiene correspondencia simétrica con los parlamentos nacionales. La comisión LIBE busca más a los parlamentos nacionales que a la inversa.

DRG: Estos contactos o estas reuniones. ¿Cuál es su eficacia? ¿Para que sirven?

JFLA: Para empezar para cumplir las reglas. Pero las prácticas son incipientes y por tanto tienen todavía mucho camino por delante. Una reunión sirve para cubrir un orden del día y un objeto.

DRG: Pero por ejemplo una labor de control de la agencias que tiene que ser hecho entre el Parlamento Europeo y los parlamentos nacionales podríamos pensar en otro foro, por ejemplo los presidentes de comisiones.

JFLA: No es descartable que en el futuro esas nuevas modalidades de trabajo acaben perfilándose así, de modo más selectivo.

DRG: LIBE prefiere canalizar todos estos contactos al interno de la comisión LIBE en vez de por ejemplo en la COSAC.

JFLA: Así es. Forma parte una lógica que tiene ya larga data y no es fácilmente reversible y es la lógica de que en la integración europea las innovaciones no se producen desplazando o eliminando formatos anteriores. Sino acumulándose, sumándose a formatos anteriores. La COSAC sigue existiendo.

DRG: Podemos pensar en la COSAC como foro para el control parlamentario de ALSJ.

JFLA: No, no, no. La idea no es esa. La idea es que haya reuniones interparlamentarias en el ALSJ por un lado y COSAC por otro. Por eso digo que se van acumulando experiencias y formatos.

DRG: Se lanzó la propuesta a los parlamentos nacionales para que influyesen en la construcción del control parlamentario de ALSJ. ¿Lo han hecho? ¿A través del presidente o de la secretaria?

JFLA: No, entre ponentes. Entonces serían contactos informales (Díaz de Mera dijo que no que era la secretaria) Y además la secretaria representa esa función de gestión. A mi la información me llega filtrada.

DRG: ¿Qué haría falta para que esta cooperación fuese más fructífera?

JFLA: Tiempo, ensayo. Experiencia. Porque la necesidad sistémica está ya definida. Por tanto lo vamos a hacer. Lo que hace falta es que vayamos colaborando cuando los asuntos lo vayan reclamando.

DRG: ¿Quieren cooperar los parlamentos nacionales con el Parlamento Europeo no es un rival?

JFLA: Es difícil establecer un diagnóstico unívoco. Por que las idiosincrasias y las culturas institucionales de los parlamentos nacionales son heterogenias. Pero yo creo que los parlamentos nacionales en general no son muy concientes de que eso lleva tiempo siendo así.

DRG: ¿Cuál es el beneficio del Parlamento Europeo en cooperar?

JFLA: Eficacia. Además de cumplir con las reglas de juego. La legislación europea rara vez es auto-ejecutable. Lo normal es que requiera un trabajo de complemento por lo parlamentos nacionales y lo normal es que se establezca una cooperación positiva. Para impactar sobre la vida de los ciudadanos, para eso hacen falta los parlamentos nacionales. El Parlamento Europeo no va a estar solo. La entrada en vigor del Tratado de Lisboa significa la creación de nuevas normas de juego que exigen muchísimo más de una cooperación interparlamentaria que está a penas ensayándose. Todavía hay mucho territorio por cubrir y solo se puede cubrir a través de la experiencia. Y eso habrá que atinarlo.

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APPENDIX B

Selected documents and reports where issues related with Europol and one or more of the British, Italian, Spanish, Dutch and Danish national parliaments were discussed.

COSAC bi-annual reports

- (2004a) 1st Bi-annual Report on EU Practices and Procedures (May 2004)
- (2004b) 2nd Bi-annual Report on EU Practices and Procedures (November 2004)

- (2005a) 3rd Bi-annual Report on EU Practices and Procedures (May 2005)
- (2005b) 4th Bi-annual Report on EU Practices and Procedures (October 2005)
- (2005c) Replies from national parliaments to the questionnaire for 4th Bi-annual Report

- (2006a) 5th Bi-annual Report on EU Practices and Procedures (May 2006)
- (2006b) Replies from national parliaments to the questionnaire for 5th Bi-annual Report
- (2006c) 6th Bi-annual Report on EU Procedures and Practises (November 2006)
- (2006d) Replies from national parliaments to the questionnaire for 6th Bi-annual Report

- (2007a) 7th Bi-annual Report on EU Procedures and Practises (May 2007)
- (2007b) Replies from national parliaments to the questionnaire for 7th Bi-annual Report
- (2007c) 8th Bi-annual Report on EU Procedures and Practises (October 2007)
- (2007d) Replies from national parliaments to the questionnaire for 8th Bi-annual Report

- (2008a) 10th Bi-annual Report on EU Procedures and Practices (November 2008)
- (2008b) Replies from Parliaments to the questionnaire for 9th Bi-annual Report
- (2008c) 9th Bi-annual Report on EU Procedures and Practices (May 2008)

- (2009a) 11th Bi-annual Report on EU Practices and Procedures (May 2009)
- (2009b) Replies from EU Parliaments to the questionnaire for 11th Bi-annual Report
- (2009c) 12th Bi-annual Report on EU Practices and Procedures (October 2009)
- (2009d) Replies from EU Parliaments to the questionnaire for 12th Bi-annual Report
- (2009e) Contribution of the XLI Meeting

- (2010a) 13th Bi-annual Report on EU Practices and Procedures (May 2010)
- (2010b) Replies from the EU Parliaments to the questionnaire for the 13th Bi-annual Report
- (2010c) 14th Bi-annual Report on EU Practices and Procedures (October 2010)
- (2010d) Replies from the EU Parliaments to the questionnaire for the 14th Bi-annual Report

COSAC minutes from meetings

(2009) XLII COSAC Stockholm, 5 - 6 October 2009

(2009) XLI COSAC Prague, 11 - 12 May 2009

(2009) XL COSAC Paris, 2 - 4 November 2008

Council of the European Union

(2006a) 'Europol: The Way Forward Towards More Efficiency and Accountability – draft Council conclusions', 6 April 2006 (8234/1/06).

(2006b) 'Friends of the Presidency's report to the Future of Europol', 19 May 2006 (9184/1/06).

(2006c) 'Draft Council Conclusions on the future of Europol', 30 May 2006 (9670/1/06).

(2009) Council Decision of 6 April 2009 'Establishing the European Police Office (Europol)' (2009/371/JHA), *Official Journal of the European Union* (15.5.2009).

European Commission

(2002) 'Communication to the European Parliament and the Council - Democratic Control over Europol' [COM(2002)95].

(2008a) 'Europol to become EU agency in 2010'. *European Commission Press Release* [IP/08/610].

(2008b) 'Proposal for a Council Decision establishing the European Police Office' [COM(2006)817].

(2010) 'Communication from the Commission to the European Parliament and the Council on the procedures for the scrutiny of Europol activities by the European Parliament, together with national parliaments' [COM(2010) 776 FINAL].

European Parliament

(1994) 'Europol', Civil Liberties and Internal Affairs Committee by Nassauer, H. [INI/1994/22/21].

(1995) 'Resolution on the Europol Convention' [RSP/1995/2600].

(1996) 'Relations between the European Parliament and the national parliaments', *Institutional Affairs Committee* by Neyts-Uyttebroeck, A. [INI/1996/2145].

(1997) 'Europol Drugs Unit: annual 1996', *Civil Liberties and Internal Affairs Committee* by Schulz, M. [COS/1997/2270].

(1998) 'Europol: place, competencies and parliamentary control', *Civil Liberties and Internal Affairs Committee* by Nassauer, H. [INI/1998/2216].

(1999) 'Recommendation to the Council on Europol: reinforcing parliamentary controls and extending powers' by Nassauer H. [A4-0064/1999].

(2000a) 'Report on the initiative from the Portuguese Republic with a view to the adoption of a Council Act on the drawing up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office and of a Protocol amending Article 2 and the Annex to that Convention (A5-0312/2000)' by Karamanou A. [2000/0809(CNS)].

(2000b) 'Resolution containing the European Parliament's proposals for the Intergovernmental Conference' [14094/1999, C5-0341/1999, 1999/0825(CNS)].

(2001a) 'Relations between the European Parliament and the national parliaments in the European construction', *Constitutional Affairs Committee* by Napolitano, G. [INI/2001/2023].

(2001b) 'Report on the initiative of the Kingdom of Belgium and the Kingdom of Sweden with a view to adopting a Council Decision extending Europol's mandate to deal with the serious forms of international crime listed in the Annex to the Europol Convention' by Turco M. [A5-0370/2001].

(2001c) 'Resolution on the results of the informal European Council meeting in Ghent' [B5-0696, 0697, 0698 and 0700/2001].

(2002a) 'Resolution on the initiative of the Kingdom of Belgium and the Kingdom of Spain with a view to adopting a Council Act drawing up a Protocol amending the Convention on the establishment of a European Police Office, the Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the establishment of a European Police Office and the Protocol on the privileges and immunities of Europol, the members of its organs, the deputy directors and the employees of Europol' [A5-0173/2002 FINAL].

(2002b) ‘Resolution on the progress made in 2001 towards the establishment of the Area of Freedom, Security and Justice provided for in Article 2, fourth indent, of the TEU’ [P5_TA(2002)0048 B5-0099/2002].

(2003) ‘Europol’s future developments’, *Citizens’ Freedoms and Rights, Justice and Home Affairs Committee* by Turco, M. and Von Boetticher, C.U. [INI/2003/2070].

(2004a) ‘Recommendation to the Council and to the European Council on the future of the Area of Freedom, Security and Justice as well as on the measures required to enhance the legitimacy and effectiveness thereof’ [2004/2175(INI)].

(2004b) ‘Resolution on the Treaty establishing a Constitution for Europe’ [2004/2129(INI)].

(2005) ‘Judicial And Police Cooperation in Europe: How to Improve Parliamentary Scrutiny in support of mutual trust and efficiency?’, pp. 1-79.

(2006) ‘What Future for Europol? Increasing Europol’s Accountability and Improving Europol’s Operating Capacity’.

(2007a) ‘Legislative resolution on the proposal for a Council decision establishing the European Police Office [COM(2006)0817 – C6-0055/2007 – 2006/0310(CNS)].

(2007b) ‘Resolution on the fight against terrorism’.

(2008a) ‘Development of the relations between the European Parliament and national parliaments under the Lisbon Treaty’, *Constitutional Affairs Committee* by Brok, E. [INI/2008/2120].

(2008b) ‘Europol: establishing the European Police Office’ *Citizens’ Freedoms and Rights, Justice and Home Affairs Committee* by García de Mera A. [2006/0310/CNS].

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